

## Restrictions or Limits?

### — *A Further Study on the Interpretation of Article 51 of the Constitution*

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**Abstract:** *Article 51 of the Constitution of China stipulates that “When exercising their freedoms and rights, citizens of the People’s Republic of China shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens.” The mainstream academic view holds that Article 51 of the Constitution is a general restrictive clause on fundamental rights. Nevertheless, from the perspectives of literal meaning, systematic interpretation and original intent, Article 51, rather than emphasizing the restriction of fundamental rights, affirms the inherent limits of fundamental rights. Article 51 does not authorize legislators to restrict fundamental rights; instead, it stresses that citizens shall not abuse their fundamental rights. Article 51 implies that fundamental rights have intrinsic boundaries, and the exercise of fundamental rights beyond such boundaries may result in the deprivation of fundamental rights.*

**Keywords:** *article 51 of the Constitution* ♦ *restriction of fundamental rights* ♦ *abuse of fundamental rights* ♦ *deprivation of fundamental rights*

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## Introduction

Recording and review serves both as a crucial part of China’s constitutional oversight system and an institutional platform for safeguarding citizens’ fundamental rights.<sup>1</sup> In the report on the work of recording and review in 2019, the Legislative Affairs Commission (LAC) of the Standing Committee of the National People’s Congress (NPC) noted that exceptions to the protection of citizens’ freedom and confidentiality of correspondence should only be provided by law under specific circumstances and relevant local

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<sup>1</sup> Li Zhongxia, “The Constitutional Dimension of the Recording and Review System,” *Law Science Magazine* 2 (2025).

regulations had overstepped their legislative authority in this regard.<sup>2</sup> In the report on the work of recording and review in 2021, the LAC noted that parent-child relationships involved citizens' personal dignity, identity, privacy, and the harmony and stability of family relations, all of which constituted fundamental rights and interests protected by the constitution and laws; mandatory paternity testing should not be stipulated in local regulations, nor should corresponding administrative penalties, disciplinary measures or handling procedures for such cases, be established.<sup>3</sup> In the *Decision on Improving and Strengthening the System of Recording and Review* issued in 2023, the NPC Standing Committee included a provision as a primary subject of scrutiny: "...whether there are provisions beyond the limits of authority of the normative document under review, reducing or impairing the rights of citizens, legal persons or other organizations, or increasing their obligations."<sup>4</sup> As noted by scholars, legal reservation has become a universally applied principle in China's recording and review system.<sup>5</sup> At a time when this principle is being integrated in China's constitutional practices, constitutional scholars are striving to develop a theory of legal reservation with Chinese characteristics for fundamental rights by focusing on the text of the Chinese constitutional law.<sup>6</sup> Such efforts of localization tend to focus on Article 51 of China's *Constitution*. To be specific, some scholars maintain that Article 51 serves not only as an "unenumerated restrictive clause" but also a "unenumerated rights clause for legal reservation."<sup>7</sup>

Article 51 of the *Constitution* stipulates that "When exercising their freedoms and rights, citizens of the People's Republic of China shall not undermine the interests of the state, society or collectives, or infringe upon the

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<sup>2</sup> Shen Chunyao, "Report on the Work of Recording and Review in 2019 by the LAC of the Standing Committee of the National People's Congress" (Delivered at the 15<sup>th</sup> Session of the Standing Committee of the 13<sup>th</sup> National People's Congress, December 25, 2019).

<sup>3</sup> Shen Chunyao, "Report on the Work of Recording and Review in 2021 by the LAC of the Standing Committee of the National People's Congress" (Delivered at the 32<sup>nd</sup> Session of the Standing Committee of the 13<sup>th</sup> National People's Congress, December 21, 2021).

<sup>4</sup> "Decision on Improving and Strengthening the System of Recording and Review" (Adopted at the 7<sup>th</sup> Session of the Standing Committee of the 14<sup>th</sup> National People's Congress, December 29, 2023).

<sup>5</sup> Zhang Xiang, "From Legal Restrictionism and Constitutional Guaranteeism to the Principle of Legal Reservation: A Constitutional History Examination of Fundamental Rights," *Zhejiang Social Sciences* 9 (2023).

<sup>6</sup> Zhang Xiang, "Now I Show You This: A Ten-Year Review of Chinese Constitutional Law," *China Law Review* 6 (2024).

<sup>7</sup> Zhang Xiang, "The Chinese Approach to the Legal Reservation of the Restrictions on Fundamental Rights," *Science of Law: Journal of Northwest University of Political Science and Law* 6 (2023).

lawful freedoms and rights of other citizens.” This provision was newly added to the 1982 *Constitution* (the current *Constitution* of the People’s Republic of China). When introducing this provision, Peng Zhen, then vice-chairman of the Constitutional Revision Commission, stated: “Freedoms and rights with absolutely no restrictions have never existed in the world. As ours is a socialist country, the interests of the State and society are in basic accord with the citizens’ personal interests. Only when the democratic rights and fundamental interests of the people as a whole are ensured and extended, will it be possible for the freedoms and rights of individual citizens to be effectively ensured and fully realized.”<sup>8</sup> The mainstream doctrine views Article 51 as an unenumerated restrictive clause for fundamental rights, which permits the State to restrict such rights in the interest of safeguarding public interest.<sup>9</sup> Furthermore, some scholars maintain that, as an unenumerated restrictive clause, the provision in Article 51 is overly simplistic, failing to reflect the concept of “restrictions on restrictions.” They suggest the introduction of principles such as proportionality and legal reservation to strengthen the protection of fundamental rights.<sup>10</sup> Nevertheless, different views are still put forward by some scholars. They contend that Article 51 focuses on the “limits of rights.”<sup>11</sup> Others maintain that Article 51 is itself an unenumerated rights clause rather than an unenumerated restrictive clause.<sup>12</sup> Given the above, this article aims to ascertain the true meaning and legal effect of Article 51 of the Constitution by systematizing the various interpretations thereof, analyzing their respective

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<sup>8</sup> Peng Zhen, “Report on the Draft Amendment to the Constitution of the People’s Republic of China (November 26, 1982),” in *Selected Works of Peng Zhen (1941-1990)* (Beijing: People’s Publishing House, 1991), 443.

<sup>9</sup> Zhou Yezhong and Han Dayuan, *Constitutional Law* (Beijing: Law Press China, 2006), 174; Hu Jinguang and Han Dayuan, *Chinese Constitutional Law (4<sup>th</sup> Edition)* (Beijing: Law Press China, 2018), 179; Zhang Xiang, “The Logic of Restricting Fundamental Rights by Public Interest,” *Legal Forum* 1 (2005); Liu Liantai, “The Relationship among the Four Categories of Interests as Grounds for Limiting Human Rights in the Text of China’s Constitution,” *Science of Law: Journal of Northwest University of Political Science and Law* 4 (2006); Shi Wenlong, “On the Restriction of Citizens’ Exercise of Rights and Freedoms and the Norm of ‘Restriction’ — A Study of Article 51 of China’s Constitution,” *Political Science and Law* 7 (2013).

<sup>10</sup> Zhao Hong, “The Restrictions on Restrictions: The Internal Mechanism of the German Model of Restrictions on Fundamental Rights,” *The Jurist* 2 (2011); Shi Wenlong, “On the Development of China’s System of Restrictions on Fundamental Rights: A Comparison Between Article 51 of China’s Constitution and Article 19 of the Basic Law of Germany,” *Journal of Comparative Law* 5 (2014).

<sup>11</sup> Liu Quan, “A New Interpretation of the Principle of Proportionality in the Context of China’s Constitution,” *Political Science and Law* 4 (2021).

<sup>12</sup> Du Qiangqiang, “Unenumerated Rights Clauses and the System of Restriction on Fundamental Rights — Another Construction Plan for Article 51 of the Constitution of PRC,” *Human Rights* 1 (2023).

strengths and weaknesses, and examining its texts, constitutional contexts, and historical backgrounds.

## **I. Interpretive Approaches to Article 51 of the *Constitution***

Since the promulgation of the 1982 *Constitution*, various interpretive approaches to Article 51 of the *Constitution* have been proposed by the theoretical community, among which the more common ones include the principle of consistency of rights and obligations, the principle of unenumerated restrictive clause for fundamental rights, the principle of safeguarding unenumerated rights, and the principle of prohibiting the abuse of fundamental rights. However, these principles have their own merits and demerits.

### **A. The principle of consistency of rights and obligations**

In the early days following the promulgation of the 1982 *Constitution*, the prevailing view held that its Article 51 reflected the consistency of citizens' rights and obligations.<sup>13</sup> Professor Xiao Weiyun notes that the new constitution was shaped by three guiding principles in its provisions on citizens' rights and freedoms: first, to expand the scope of citizens' rights and freedoms; second, to uphold the consistency of rights and obligations, as well as of freedom and discipline; and third, to recognize that there has never been any such thing as absolute freedom in the world.<sup>14</sup> "From our perspective, the consistency of rights and obligations means that a citizen shall both enjoy rights and undertake obligations, and shall both enjoy extensive freedoms and accept the constraints of discipline... This principle runs throughout the entire constitution. According to Article 51, ... In other words, enjoying rights and freedoms without fulfilling obligations or accepting disciplinary constraints shall inevitably infringe upon the interests and freedoms of the state, society, collectives, and others. This is why we advocate for the principle of consistency. No citizen shall be permitted to emphasize only their rights

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<sup>13</sup> the People's Daily Press, *Lectures on the Constitution of the People's Republic of China* (Beijing: People's Daily Press, 1983), 102; Xiao Weiyun, "The Consistency of the Citizens' Fundamental Rights and Obligations in China," *Theory Research* 1 (1983); Zhang Qingfu and Luo Weijian, *Lectures on the Constitution of the People's Republic of China* (Wuhan: Hubei People's Press, 1986), 162; Compilation Group, *Lectures on the Constitution of the People's Republic of China*, reviewed by Cai Cheng and Liu Zhongde (Beijing: Law Press • China, 1991), 71.

<sup>14</sup> Xiao Weiyun, *The Birth of China's Current Constitution* (Beijing: Peking University Press, 2024), 65-69.

beyond the bounds of discipline and law to the detriment of others, through acts such as unwarranted insult, defamation, or unrestrained speech. This clearly constitutes one aspect of the consistency of rights and obligations.”<sup>15</sup> Professor Cai Dingjian also maintains that Article 51 serves as a general restrictive clause governing the exercise of citizens’ fundamental rights, represents the principle of consistency between rights and obligations, and constitutes the overarching principle underlying provisions on citizens’ obligations.<sup>16</sup>

The strength of the principle of consistency of rights and obligations lies in its alignment with the guiding principles of the constitutional revision and its internal coherence — while Article 51 ostensibly regulates the exercise of rights, it in essence focuses on the negative obligations borne by citizens in that exercise, thus reflecting the principle that rights and obligations are two sides of a coin. However, equating Article 51 solely with the consistency of rights and obligations fails to account for its full normative scope. First, while reflecting a guiding ideology or constitutional principle, a constitutional provision may simultaneously include a definitive rule or command. For instance, according to Article 38 of the *Constitution*, “The personal dignity of citizens of the People’s Republic of China shall not be violated,” which reflects the guiding ideology or constitutional principle that “the State shall respect and protect human rights.” Yet, more importantly, Article 38 itself constitutes the specific provision safeguarding citizens’ personal dignity. Reducing Article 51 solely to the consistency of rights and obligations risks overlooking its specific normative substance. Second, while the principle of consistency between rights and obligations was the mainstream theory in the 1950s and again in the 1980s-1990s, the development of constitutional theory has led the Chinese constitutional academia to recognize its inherent flaws — such as blurring the boundaries between public and private spheres and their respective subjects of obligation, overlooking the structural asymmetry between fundamental rights and obligations, and disregarding individual’s right to self-determination over personal interests — thus casting doubt on both its rationality and coherence.<sup>17</sup>

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<sup>15</sup> *Ibid.*, 67.

<sup>16</sup> Cai Dingjian, *Constitution: An Intensive Reading (2<sup>nd</sup> Edition)* (Beijing: Law Press China, 2006), 285.

<sup>17</sup> Xu Ruichao, “On the Principle of Consistency of Rights and Obligations in the Constitution of PRC,” *Human Rights* 1 (2023); Liu Jianlong, “The Concretization of the Principle of Equality: A Hermeneutic Reconstruction

Third, from a literal meaning perspective, the “no harm” principle embedded in Article 51 is rather an emphasis on the boundaries within which citizens exercise their rights than one on their negative obligations; it affirms rather that “all rights have their limits than that “rights entail obligations.”

### **B. The principle of unenumerated restrictive clause for fundamental rights**

Mainstream doctrine holds that Article 51 of the *Constitution* serves as a general restrictive provision for citizens’ fundamental rights.<sup>18</sup> According to records, at the third plenary meeting of the Constitutional Revision Commission on April 12, 1982, then-Secretary-General Hu Qiaomu explained the draft version of the *Constitution* under discussion: “Some also suggested adding the phrase ‘in accordance with the law’ before the freedom of speech, the press, assembly, association, procession and demonstration. However, since a separate article in this chapter already provides a general restriction, it is unnecessary to add ‘in accordance with the law’ here.”<sup>19</sup> The so-called “general restriction” refers precisely to the stipulation in Article 51.<sup>20</sup> On the occasion of the first anniversary of the promulgation of the 1982 *Constitution*, Peng Zhen stated: “Citizens’ freedoms and rights are fully provided for and concretely guaranteed by the constitution. Their exercise is subject to only one restriction, which is that ‘when exercising their freedoms and rights, citizens shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens.’ It is entirely necessary to impose such a restriction for the purpose of safeguarding the utmost interests of the overwhelming majority of the people and protecting the lawful freedoms and rights of individual citizens.”<sup>21</sup> Professor Xu Chongde maintains that Article 51

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of Article 33, Paragraph 4 of the Chinese Constitution,” *Human Rights* 1 (2025).

<sup>18</sup> Zhou Yezhong, *Constitution (5<sup>th</sup> Edition)* (Beijing: Higher Education Press, 2020), 246; Zhang Xiang, “The Logic of Restricting Fundamental Rights by Public Interest,” *Legal Forum* 1 (2005); Shi Wenlong, “On the Restriction of Citizens’ Exercise of Rights and Freedoms and the Norm of ‘Restriction’ — A Study of Article 51 of China’s Constitution,” *Political Science and Law* 7 (2013); Shi Wenlong, “On the Development of China’s System of Restrictions on Fundamental Rights: A Comparison Between Article 51 of China’s Constitution and Article 19 of the Basic Law of Germany,” *Journal of Comparative Law* 5 (2014); Shi Wenlong, “Achievements, Problems, and Countermeasures: An Analysis of the Current Situation of the System of Restriction on Fundamental Rights of Our Country,” *Human Rights Studies (Collection)* 1 (2021).

<sup>19</sup> Xu Chongde, *History of the Constitution of the People’s Republic of China*, vol. 2 (Fuzhou: Fujian People’s Publishing House, 2005), 418.

<sup>20</sup> Chen Chufeng, “Formal Requirements for the Restriction on Fundamental Rights in China’s Constitution,” *Chinese Journal of Law* 5 (2021); Chen Peng, “The Emergence and Structure of Legal Reservation of Fundamental Rights in China’s Constitution,” *Social Sciences in China* 12 (2023).

<sup>21</sup> Peng Zhen, “Further Implement and Act Strictly in Accordance with the Constitution (December 3, 1983),” in *Selected Works of Peng Zhen (1941-1990)* (Beijing: People’s Publishing House, 1991), 485.

serves as a restrictive provision on citizens' rights and freedoms, which is entirely necessary; it ensures that every citizen may fully enjoy and exercise their fundamental rights while also safeguarding the normal order, stability, and harmony of society as a whole.<sup>22</sup> Based on the above, some scholars assert that Article 51 imposes an unenumerated restriction on fundamental rights. They argue that the relevant explanations by Hu Qiaomu imply that the rights provided in Article 35 may be restricted "in accordance with the law" based on Article 51; therefore, Article 51 carries the meaning of legal reservation, making it not only an "unenumerated restrictive clause" but also a "unenumerated rights clause for legal reservation."<sup>23</sup>

The principle of unenumerated restrictive clauses for fundamental rights reflects the concept that "rights are not absolute," which also aligns with the general principles of constitutional law. If, as some scholars advocate, Article 51 is interpreted as encompassing requirements such as the principle of proportionality, legal reservation, and the protection of essential content, it would contribute to achieving the goal of maximizing the protection of fundamental rights. However, logical flaws exist in the interpretation of Article 51 as an authorization for the State to restrict fundamental rights by law on grounds of public interest. First, such an interpretation does not align with the literal meaning of Article 51. The formulation of Article 51 reads, "When exercising their rights, citizens shall not..." This functions as rather an admonition to citizens than an authorization to the state. The phrase "citizens shall not" may not be equated with "the State may." Second, interpreting Article 51 as an unenumerated rights clause for legal reservation conflates constitutional restrictions on fundamental rights with legal restrictions, internal restrictions with external ones, and substantive restrictions with procedural ones. In terms of Hu Qiaomu's above explanation, there are two possible interpretations: first, "Article 51 explicitly permits restricting fundamental rights "in accordance with the law," making it unnecessary to add the phrase 'in accordance with the law' to Article 35"; second, "because Article 51 already imposes restrictions on fundamental rights, there is no need to further restrict the rights under Article 35 through separate legislation." The latter interpretation aligns more closely with the structural logic of Chapter II of the

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<sup>22</sup> Xu Chongde, *History of the Constitution of the People's Republic of China*, vol. 2, 493.

<sup>23</sup> Zhang Xiang, "The Chinese Approach to the Legal Reservation of the Restrictions on Fundamental Rights."

*Constitution*. In fact, some fundamental rights stipulated in Chapter II of the *Constitution* (such as the right to vote and stand for election, personal freedom, freedom and confidentiality of correspondence) contain explicit stipulations permitting restrictions in accordance with the law. If Article 51 were understood as generally authorizing the legislature to restrict fundamental rights, such explicit wording in these specific rights clauses would be unnecessary. As scholars have correctly noted, Article 51 imposes substantive restrictions on fundamental rights; what it conveys is that when exercising their rights and freedoms, citizens shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens; beyond this, no additional restrictions may be imposed — even if such restrictions are established in accordance with the law.<sup>24</sup> Furthermore, interpreting Article 51 as an unenumerated rights clause for legal reservation contradicts the original intent behind the constitutional amendment. According to scholarly research, the 1982 *Constitution* deliberately omitted an unenumerated rights clause for legal reservation, primarily to maximize the protection of fundamental rights and to prevent such a scenario: “While the Constitution grants the people their fundamental rights, the law simultaneously takes them away.”<sup>25</sup> Of course, original intent is not the sole criterion for constitutional interpretation. Nevertheless, Article 51 of the *Constitution* fails to be reasonably interpreted as granting the State an unenumerated authorization to restrict fundamental rights through legislation.

### **C. The principle of safeguarding unenumerated rights**

Unlike other principles, the principle of safeguarding unenumerated rights argues that Article 51 of the *Constitution* shall be interpreted as a clause safeguarding fundamental rights. This theory emerged following the constitutionalization of human rights and the awakening of rights awareness. Some scholars have observed that although unenumerated constitutional rights are of great significance, the “human rights clause” incorporated into the *Constitution* through the 2004 amendment has its limitations and is insufficient to provide a foundation for safeguarding these unenumerated rights; in contrast,

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<sup>24</sup> Li Zhongxia, “The Chinese Approach to Legal Reservation: The Introduction and Application of the ‘Essential Importance’ Criterion,” *Chinese Journal of Law* 2 (2025).

<sup>25</sup> Chen Chufeng, “Formal Requirements for the Restriction on Fundamental Rights in China’s Constitution,” *Chinese Journal of Law* 5 (2021).

they argue that Article 51 serves the purpose of restricting rights precisely for their protection and may be interpreted as an unenumerated clause for fundamental rights, thereby functioning as a normative basis for both unenumerated constitutional rights and emerging rights.<sup>26</sup> Other scholars contend that, while China's *Constitution* expressly stipulates "personal freedom," it does not explicitly provide for "general freedom of action," neither the human rights clause nor the personal freedom provision can serve as the normative basis for this unenumerated right. From the perspective of literal meaning, the "freedoms and rights" referenced in Article 51 could potentially encompass unenumerated rights such as general freedom of action. From a systematic interpretation perspective, an unenumerated rights clause could be incorporated into the *Constitution* following the enumeration of specific rights. Interpreting Article 51 as an unenumerated rights clause that includes general freedom of action would render China's constitutional framework a "flawless" system of fundamental rights norms. Such a system would encompass both enumerated and unenumerated rights, as well as the general freedom of action.<sup>27</sup>

The merits of the principle of safeguarding unenumerated rights are that it effectively "transforms" Article 51 of the *Constitution* from a restrictive clause into a safeguard clause, thereby forging an alternative path for the inclusion of unenumerated rights in the *Constitution*. This approach aligns with the value orientation of maximizing the protection of fundamental rights. However, the drawbacks of this principle are equally evident. On the one hand, such an interpretation deviates from the literal meaning of Article 51. Indeed, the "freedoms and rights" referred to in Article 51 may potentially include unenumerated rights. However, the primary focus of the entire article lies clearly on the prohibition against citizens undermining the interests of the state,

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<sup>26</sup> Wang Jinwen, "Interpretation and Application of the Protection Function of the Restrictive Clauses of Constitutional Fundamental Rights — With a Discussion on Recognition and Protection of Emerging Fundamental Rights," *Journal of the East China University of Political Science and Law* 5 (2018).

<sup>27</sup> The reason why the human rights clause may not serve as the normative basis for general freedom of action lies in the fact that certain common behavioral freedoms (such as smoking) lack the attributes of human rights. The reason why the personal freedom clause may not serve as the normative basis for general freedom of action is that the restriction on personal freedom constitutes a matter subject to legal reservation. In practice, however, many local jurisdictions in China have enacted regulations controlling smoking. If general freedom of action were considered part of personal freedom, then such local regulations would arguably be unconstitutional. Du Qiangqiang, "Unenumerated Rights Clauses and the System of Restriction on Fundamental Rights — Another Construction Plan for Article 51 of the Constitution of PRC," *Human Rights* 1 (2023).

society or collectives, or infringing upon the lawful freedoms and rights of others when exercising their own rights and freedoms, rather than on guaranteeing that any exercise not causing such harm is protected. On the other hand, such an interpretation does not align with the original intent of the constitutional amendment. According to historical records of the constitutional amendments, the framers had no intention of making Article 51 an unenumerated clause for fundamental rights. The principle of safeguarding unenumerated rights considers the absence of explicit provisions for unenumerated rights or a general freedom of action as a “flaw” in China’s *Constitution* — a premise that is debatable itself. If a constitutional basis for unenumerated rights is to be established, the human rights clause is, from any perspective, a more suitable foundation than Article 51.<sup>28</sup> Even if a general freedom of action may not be directly derived from the human rights clause, it may still find a basis within the scope of the personal freedom clause. The “essential importance” criterion is adequate to ease the tension between restricting general freedom of action and the principle of legal reservation.<sup>29</sup>

#### **D. The principle of prohibiting the abuse of fundamental rights**

Even in the last century, quite many scholars regarded Article 51 of the *Constitution* as a provision prohibiting citizens from abusing their freedoms and rights.<sup>30</sup> Professor Li Buyun considers Article 51 a highly significant new provision. From a global perspective, constitutions of capitalist countries generally contain similar provisions, which are typically expressed in two forms: one emphasizes that citizens’ freedoms and rights shall not be abused, while the other stresses that citizens’ freedoms and rights shall be exercised in accordance with the law. Early socialist constitutions did not include

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<sup>28</sup> Han Dayuan, “A Normative Analysis of the ‘Human Rights Clause’ in the Constitutional Text,” *The Jurist* 4 (2004); Zhang Weiwei, “The ‘Human Rights Clause’: A ‘Domicile’ for Unenumerated Constitutional Rights,” *Law Review* 1 (2011); Li Haiping and Xing Tao, “The Incorporation of Human Rights Clauses into the Constitution and the Innovation of Fundamental Rights Hermeneutics,” *Human Rights* 3 (2025).

<sup>29</sup> According to the “essential importance” criterion, fundamental rights are categorized into three categories: essential content, core content, and peripheral content. The requirement of legal reservation applies only when the core content of a fundamental right is implicated. Li Zhongxia, “The Chinese Approach to Legal Reservation: The Introduction and Application of the ‘Essential Importance’ Criterion,” *Chinese Journal of Law* 2 (2025).

<sup>30</sup> Wu Jie, Lian Xisheng and Wei Dingren, *Interpretations of the Constitution of the People’s Republic of China* (Beijing: Law Press China, 1984), 89; Wang Dexiang and Xu Bing, *Annotations of the Constitution of the People’s Republic of China* (Beijing: Qunzhong Publishing House, 1984), 116; Wu Jialin and Guan Xin, *Constitutional Law* (Beijing: China Central Radio & TV University Press, 1991), 258; Zhu Feng and Wang Lei, *Annotations of the Constitution of the People’s Republic of China* (Beijing: People’s Publishing House, 1993), 123.

provisions stipulating that citizens' freedoms and rights shall be exercised in accordance with the law. This omission served both to distinguish them from capitalist constitutions and to reflect a lack of practical experience at the time. However, as socialist practices evolved, it became increasingly evident that, to combat the disruptive activities of hostile elements and the abuse of freedoms and rights by a small number of individuals within the people, it was essential to explicitly stipulate in their constitutions that the exercise of citizens' freedoms and rights shall not undermine the interests of the State or collectives, or infringe upon other citizens.<sup>31</sup> The textbook on constitutional law compiled by Xu Chongde similarly views Article 51 of the *Constitution* as a restrictive clause designed to prevent the abuse of rights by citizens and a guiding principle for the proper exercise of rights and freedoms.<sup>32</sup>

The merits of the principle of prohibiting the abuse of fundamental rights are that it aligns with the literal meaning of Article 51 and also conforms to the original intent behind its enactment. The term "abuse," although not directly adopted in Article 51, appeared in the draft of the chapter "Fundamental Rights and Obligations of Citizens" as the wording "the abuse of freedoms and rights shall be prohibited."<sup>33</sup> The language of Article 51 may also be interpreted as prohibiting the infringement of public interest and the rights of others through the abuse of fundamental rights. Therefore, it is relatively appropriate to refer to Article 51 as a provision prohibiting the abuse of fundamental rights<sup>34</sup>. However, as the principle of abuse implies regulation on citizens and a narrowing of the scope of rights — at least ostensibly, which appears inconsistent with the goals of restricting State power and safeguarding citizens' rights — many scholars have adopted a cautious attitude toward this interpretation. As a result, the principle of prohibiting the abuse of fundamental rights has gradually been marginalized in the 21<sup>st</sup> century.

## **II. Why It is Defined as a Provision Prohibiting the Abuse of Fundamental Rights**

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<sup>31</sup> Li Buyun, *A Brief Introduction to the New Constitution* (Beijing: Law Press China, 1984), 157-159.

<sup>32</sup> Xu Chongde, *China's Constitution (4<sup>th</sup> Edition)* (Beijing: China Renmin University Press, 2010), 336.

<sup>33</sup> Xu Chongde, *History of the Constitution of the People's Republic of China*, vol. 2, 380.

<sup>34</sup> Gao Huiming, "On the Prohibition of Abuse of Fundamental Rights," *Tsinghua University Law Journal* 1 (2015).

Although the term “abuse” is not explicitly used in Article 51 of the Constitution, the concept of prohibiting the abuse of fundamental rights is already embedded within it. Fundamental rights possess both inherent limits and external restrictions. Article 51 tends to focus on the inherent limits in fundamental rights, and any exercise of freedoms and rights that exceeds these inherent limits constitutes an abuse of such rights.

#### **A. Questions raised based on literal interpretation regarding the mainstream doctrine**

As discussed above, the mainstream doctrine holds that Article 51 of the *Constitution* authorizes the State to restrict citizens’ fundamental rights for the sake of public interest. Guided by the spirit of maximizing the protection of fundamental rights, it is advocated by most scholars that Article 51 shall be strictly interpreted, so as to ensure that the State adheres to requirements including the principles of proportionality, legal reservation, and the protection of essential content when restricting citizens’ fundamental rights. Admittedly, there are merits in focusing on “restrictions on restrictions” as a means to safeguard fundamental rights. However, the issue lies in the fact that Article 51 does not explicitly or directly authorize the State to restrict fundamental rights. What Article 51 focuses on is that when exercising their freedoms and rights, citizens shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens. This provision serves as an admonition to citizens, rather than an authorization to the state. “What citizens shall not do” in no way equals “what the State may do.” If the framers of the constitution had intended to authorize the State to restrict fundamental rights, they would have employed language similar to that used in Paragraph 3 of Article 10 or Paragraph 3 of Article 13 of the *Constitution*: “The State may, in order to meet the demands of the public interest and in accordance with the provisions of law...” Therefore, the claim that Article 51 authorizes the State to restrict fundamental rights does not align with the literal meaning of Article 51.

Some may argue that the framers did not employ language such as “the State may” due to limitations in legislative drafting techniques, given that the explicit reference to public interest had not been introduced until the 2004 constitutional amendment was made. However, the history of the constitutional

amendments shows that this was not the case. It is widely recognized that capitalist constitutions, on the one hand, elaborate on citizens' freedoms and rights, while on the other hand, impose various restrictions — often by means of “exception clauses” or similar formulations — on the exercise of these freedoms and rights by citizens. Karl Marx criticized this as “paying lip service to freedom in general statements while abolishing it through provisos.” Influenced by Marxism and the modern constitutional practices in China, early Chinese Communists held a critical stance toward the practice of restricting fundamental rights through legal means. This attitude was later reflected in the text of the 1954 *Constitution*.<sup>35</sup> Having learned from the lessons of the Cultural Revolution, constitutional framers came to realize that unrestrained, absolute freedom was not worth pursuing, and thus began to focus on the idea that all rights are relative and restricted.<sup>36</sup> Nevertheless, to ensure the extensiveness and genuineness of citizens' freedoms and rights enshrined in the socialist constitution, the 1982 *Constitution* did not establish an unenumerated rights clause for legal reservation.<sup>37</sup> Peng Zhen repeatedly stated that there was only one restriction in the *Constitution* on citizens' exercise of their freedoms and rights, i.e., “citizens shall not undermine the interests of the State, society or collectives, or infringe upon the lawful freedoms and rights of other citizens.”<sup>38</sup> Professor Xu Chongde also noted that China's *Constitution* explicitly imposes restrictions on civil rights and freedoms in its articles, instead of employing covert approaches as capitalist constitutions tend to do.<sup>39</sup> Thus, Article 51 represented a restriction on fundamental rights by the *Constitution* itself, rather than an authorization to restrict such rights through ordinary legislation. The framers of the *Constitution* did not intend to authorize the State to restrict fundamental rights through law via Article 51.

## **B. Two forms of restrictions on fundamental rights**

Another issue with interpreting Article 51 of the *Constitution* as authorizing the State to restrict fundamental rights through law is the conflation

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<sup>35</sup> Zhang Xiang, “From Legal Restrictionism and Constitutional Guaranteeism to the Principle of Legal Reservation: A Constitutional History Examination of Fundamental Rights,” *Zhejiang Social Sciences* 9 (2023).

<sup>36</sup> Li Buyun, *A Brief Introduction to the New Constitution* (Beijing: Law Press China, 1984), 159.

<sup>37</sup> Chen Chufeng, “Formal Requirements for the Restriction on Fundamental Rights in China's Constitution.”

<sup>38</sup> Peng Zhen, *Selected Works of Peng Zhen (1941-1990)* (Beijing: People's Publishing House, 1991), 485 and 577; Peng Zhen, *Chronicle of Peng Zhen (1979-1997)*, vol. 5 (Beijing: Central Party Literature Press, 2012), 390.

<sup>39</sup> Xu Chongde, *History of the Constitution of the People's Republic of China*, vol. 2, 492.

of the inherent limits in and external restrictions on fundamental rights. In fact, limits of fundamental rights are both inherent and external. The so-called inherent limits in fundamental rights refer to the constraints that arise from the nature or characteristics of the rights themselves, such as the rule of not harming others. The so-called external restrictions on fundamental rights refer to restrictions imposed from outside the rights themselves, such as restrictions on private property imposed by legislators for the sake of public interest.<sup>40</sup> It is generally believed that Paragraph 1 of Article 2 of the *Basic Law for the Federal Republic of Germany* (hereinafter referred to as the *Basic Law of Germany*) clearly defines the inherent limits in fundamental rights, which states that “Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.” Paragraph 2 of Article 2 stipulates the external restrictions on fundamental rights, which states that “Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.” Both inherent limits and external restrictions serve to guide citizens in exercising their rights appropriately and preventing the infringement of others’ lawful rights or disruption of public order. However, they differ in origin, basis, and logical priority. Inherent limits address the question of “which actions are protected by fundamental rights,” while external restrictions deal with the question of “which interventions on fundamental rights are justified.” Logically, inherent limits precede external restrictions.

Some scholars argue that the theory of inherent limits in fundamental rights preemptively excludes certain actions from the scope of protection of fundamental rights, and as a result, State interventions against such actions are not considered restrictions on fundamental rights, thereby evading constitutional scrutiny. This is seen as detrimental to the goal of maximizing

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<sup>40</sup> Nobuyoshi Ashibe, *Constitution (6<sup>th</sup> Edition)*, supplemented and revised by Kazuyuki Takahashi, translated by Lin Laifan, Ling Weici, and Long Xuanli (Beijing: Tsinghua University Press, 2018), 75; Lin Laifan, *Lectures on Constitutional Law (3<sup>rd</sup> Edition)* (Beijing: Tsinghua University Press, 2018), 345-347; Eckart Klein, “On Limits and Restrictions of Human Rights: A Systematic Attempt,” in *Strengthening Human Rights Protections in Geneva, Israel, the West Bank and Beyond*, Joseph E. David et al ed. (Cambridge: Cambridge University Press, 2021), 10-39; Stephen Gardbaum, “The Structure and Scope of Constitutional Rights,” in *Comparative Constitutional Law*, Tom Ginsburg and Rosalind Dixon ed. (Cheltenham: Edward Elgar, 2011), 388-405.

the protection of fundamental rights, which may not be adopted.<sup>41</sup> However, this argument may not hold water. On the one hand, all freedoms and rights have boundaries. There are no freedoms or rights in the world without limits, nor may the scope of protection for fundamental rights be boundless. In fact, this was also the view held by the drafters of the 1982 *Constitution*.<sup>42</sup> The idea that “your right to swing your fist ends where my nose begins” focuses on the inherent limits in fundamental rights. If one does not acknowledge the inherent limits in fundamental rights, such absurd questions as whether we have the freedom to harm or kill others may arise. On the other hand, without delineating the boundaries of fundamental rights from within and clarifying their scope of protection, it is highly likely that conflicts between fundamental rights may arise. In such cases, one citizen’s fundamental rights could become grounds for restricting another’s, ultimately leading to the same outcome — restrictions on fundamental rights. As scholars have noted, broadly defined rights would compel the State to intervene in order to prevent citizens from using their freedoms and rights to harm others or society. Consequently, the goal of maximizing the protection of fundamental rights would not be attained.<sup>43</sup> Therefore, the theory of inherent limits in fundamental rights is not detrimental to their protection. Inherent limits and external restrictions differ in nature but are not mutually exclusive.

### **C. Article 51 of the *Constitution* aiming to focus on inherent limits**

The inherent limits in fundamental rights are determined by the nature of the rights themselves, while external restrictions are imposed from outside the rights. Inherent limits are not the result of public power intervention and are typically unwritten or directly derived from the constitution. In contrast, external restrictions result from the exercise of public power and usually take

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<sup>41</sup> Zhang Xiang, “The Logic of Restricting Fundamental Rights by Public Interest,” *Legal Forum* 1 (2005); Zhang Xiang, “The Normative Structure and Resolution Models of Fundamental Rights Conflicts,” *Studies in Law and Business* 4 (2006); Zhang Xiang, “A Framework for Analyzing the Restrictions on Fundamental Rights,” *The Jurist* 1 (2008); Zhang Xiang, *The Normative Construction of Fundamental Rights (3<sup>rd</sup> Edition)* (Beijing: Law Press China, 2023), 239.

<sup>42</sup> “Some people claim that there is no freedom of speech in China, which is incorrect. The freedom of speech we uphold is one that is exercised under the premise of not opposing the Four Cardinal Principles, and does not infringe upon the freedoms of the state, society, the collective, or other individuals. Absolute freedom beyond these boundaries is not permissible.” Xiao Weiyun, *The Birth of China’s Current Constitution* (Beijing: Peking University Press, 2024), 69.

<sup>43</sup> Wang Kai, “The Delimitation of the Scope of Protection of Fundamental Rights,” *Chinese Journal of Law* 5 (2020); Liu Jianlong, “On Conflicts of Fundamental Rights,” *Peking University Law Journal* 6 (2021).

the form of legislative, administrative, or judicial intervention. Inherent limits are dictated by the inherent nature of the right itself and generally require no justification, whereas external restrictions are imposed for the sake of public interest and shall always be justified.<sup>44</sup> What Article 51 of the *Constitution* focuses on are the inherent limits in fundamental rights. First, in terms of its wording, Article 51 employs the phrase “citizens shall not,” which functions as a call for self-discipline — a restriction intrinsic to the rights themselves. Second, in terms of the nature of the restriction, the constraint stipulated in Article 51 originates directly from the constitution rather than from ordinary legislation. Moreover, in terms of restrictive content, Article 51 stresses that “the exercise of rights shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens” — a principle widely recognized across the world as self-evident. Finally, in terms of the constitutional framework, citizens’ fundamental rights are enumerated from Articles 33 to 50, while their fundamental obligations are defined from Articles 52 to 56. Serving as a transitional clause linking these two sections, Article 51 clarifies the inherent boundaries in exercising rights, reflecting a logical progression “from within outward.” Therefore, as scholars have argued, Article 51 serves as a normative expression of the inherent limits in fundamental rights.<sup>45</sup> By focusing on inherent limits, Article 51 clarifies the limits of rights, i.e., they shall be exercised on the condition that they shall not undermine the public interest or infringe upon the lawful rights of other citizens.<sup>46</sup>

After clarifying that Article 51 stipulates the inherent limits in fundamental rights, it remains necessary to explore its relationship with the external restrictions of such rights. Among the fundamental rights of citizens stipulated in Chapter II of the *Constitution*, some are explicitly subject to restrictions in accordance with the law (e.g., the right to vote and stand for

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<sup>44</sup> Wang Kai, “The Delimitation of the Scope of Protection of Fundamental Rights,” *Chinese Journal of Law* 5 (2020).

<sup>45</sup> Han Dayuan, *Basic Theories of Constitutional Law* (Beijing: China University of Political Science and Law Press, 2008), 236; Lin Laifan, *From Normative Constitution to Constitutional Norm: A Preface to Normative Constitutional Studies* (Beijing: The Commercial Press, 2017), 109; Lin Laifan, *Lectures on Constitutional Law (3<sup>rd</sup> Edition)* (Beijing: Tsinghua University Press, 2018), 346; Hu Jinguang and Han Dayuan, *Chinese Constitutional Law (4<sup>th</sup> Edition)* (Beijing: Law Press China, 2018), 180.

<sup>46</sup> Liu Quan, “A New Interpretation of the Principle of Proportionality in the Context of China’s Constitution,” *Political Science and Law* 4 (2021).

election under Article 34), while others do not explicitly specify whether they may be restricted in accordance with the law (e.g., the freedom of speech under Article 35). Then one may raise a question: May the latter category of fundamental rights be restricted by law? Some scholars note that Article 51 allows for two possible interpretations: first, this provision already implies that fundamental rights may be restricted by law; second, it replaces statutory restrictions with general constitutional restrictions — an approach known as “constitutional reservation.” Given that the second interpretation (i.e., constitutional reservation) works less than ideally in practice, it may be more reasonable to interpret Article 51 as requiring that any restriction of fundamental rights be subject to the principle of legal reservation.<sup>47</sup> Others maintain that Article 51 is an unenumerated rights clause for legal reservation itself.<sup>48</sup> Meanwhile, some scholars argue that constitutional reservation offers stronger protection for fundamental rights than legal reservation. Therefore, fundamental rights under Chapter II of the *Constitution* that are not explicitly linked to legal reservation shall be applicable to constitutional reservation.<sup>49</sup> The author endorses the latter view. From the perspective of both the literal meaning and original intent of Article 51, and in light of the goal of maximizing the protection of fundamental rights, it may be presumed that the constitution does not grant the legislature the authority to restrict fundamental rights that are not explicitly subject to legal reservation.<sup>50</sup> In this sense, Article 51 is better understood as a constitutional reservation clause rather than an unenumerated rights clause for legal reservation.<sup>51</sup> Although constitutional reservation has not yet been established in China’s practice of recording and

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<sup>47</sup> Chen Chufeng, “Formal Requirements for the Restriction on Fundamental Rights in China’s Constitution,” *Chinese Journal of Law* 5 (2021).

<sup>48</sup> Zhang Xiang, “The Chinese Approach to the Legal Reservation of the Restrictions on Fundamental Rights,” *Science of Law: Journal of Northwest University of Political Science and Law* 6 (2023).

<sup>49</sup> Liang Zhicheng, “Revisiting Legal Reservation in the Constitution: An Analysis from the Perspective of Normative Phenomena,” *Journal of Gansu University of Political Science and Law* 5 (2024).

<sup>50</sup> Chen Peng, “The Emergence and Structure of Legal Reservation of Fundamental Rights in China’s Constitution,” *Social Sciences in China* 12 (2023).

<sup>51</sup> Constitutional reservation does not mean that laws may not make provisions; rather, under the circumstance where the Constitution monopolizes the authority for “norm creation,” laws may only be confined to the scope of “norm application.” When constitutional reservation applies, the legislature’s discretion is narrower. Liang Zhicheng, “Revisiting Legal Reservation in the Constitution: An Analysis from the Perspective of Normative Phenomena,” *Journal of Gansu University of Political Science and Law* 5 (2024). Article 5 of the Michigan Constitution (1963) states: “Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.” Accordingly, while laws may not restrict the freedom of speech, they may prescribe the consequences for its abuse.

review, this does not mean that Article 51 shall be “downgraded” from constitutional reservation to legal reservation.

#### **D. Exceeding inherent limits as an abuse of fundamental rights**

As is widely recognized, freedom is confined by the principle of not infringing upon the freedom of others. The French *Declaration of the Rights of Man and of the Citizen* states: “Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of society the enjoyment of the same rights.” The “no harm” principle represents the inherent limit of fundamental rights. The exercise of fundamental rights, once exceeding their limits and infringing upon the fundamental rights of others, constitutes an abuse of such rights.<sup>52</sup> The so-called abuse of fundamental rights refers to conduct that, while appearing to be an exercise of freedom or rights, has in fact transgressed the limits permitted by freedom or rights and is therefore unprotected.<sup>53</sup> Conduct that abuses fundamental rights falls outside the scope of protection of fundamental rights from the outset.<sup>54</sup> The key to understanding the abuse of fundamental rights lies in distinguishing between the factual coverage and the protection of fundamental rights. Certain conduct may fall within the factual coverage of a fundamental right but not within its protection.<sup>55</sup> Take freedom of speech as an example. Although defamation constitutes a form of speech, such speech is not protected by freedom of speech. As the Hong Kong Court of Final Appeal noted in *Ng Yat Chi’s* case, “The right of access to the courts is a constitutional right firmly entrenched in the

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<sup>52</sup> Chen Xinmin, *Introduction to Constitutional Law* (Taipei: San Min Book Co., Ltd., 1996), 73. Some scholars argue that the exercise of fundamental rights constitutes an abuse if it contravenes the very purpose for which the State recognizes such rights. “The State recognizes individual freedom aiming to promote the development of the superiority of an individual intellectually, morally and physically. If a person enjoying freedom, in exercising that freedom, acts contrary to the aforementioned purpose, such conduct shall be regarded as an abuse of freedom, just as conduct that infringes upon the freedom of others would be. For example, a person entitled to personal freedom who, by exercising that freedom, willingly treats their own body as an object of trade or voluntarily subjects themselves to servitude (i.e., allows their body and labor to be under another’s control within a legally prescribed period), may not be considered as infringing upon another’s freedom. However, such conduct fundamentally contradicts the purpose for which the State recognizes individual freedom, as it essentially hinders the development of the superiority of an individual intellectually, morally and physically.” Wang Shijie and Qian Duansheng, *Comparative Constitutional Law* (Beijing: The Commercial Press, 1999), 77.

<sup>53</sup> Fredrick Schauer, “Can Rights be Abused?” *The Philosophical Quarterly*, vol. 31, no. 124 (1981).

<sup>54</sup> Wang Kai, “On the Loss of Fundamental Rights in German Law,” *Global Law Review* 3 (2018).

<sup>55</sup> Wang Kai, “The Delimitation of the Scope of Protection of Fundamental Rights,” *Chinese Journal of Law* 5 (2020).

common law and protected by Article 35 of the *Basic Law (of the Hong Kong Special Administrative Region of the People's Republic of China)*. Yet, it would be absurd to suggest that the right of access to the courts includes a right to abuse the processes of the courts.”<sup>56</sup>

Article 51 of the *Constitution* prohibits citizens from undermining, when exercising their freedoms and rights, the interests of the State, society or collectives, or infringing upon the lawful freedoms and rights of other citizens. According to Peng Zhen, this provision was designed to prohibit anyone from using freedoms and rights to engage in counter-revolutionary activities or other criminal acts that disrupt social, production, or work orders.<sup>57</sup> This intent aligns with Article 18 of the *Basic Law of Germany*, which prohibits the abuse of freedom of expression, freedom of association, privacy of correspondence, property rights, and the right of asylum in order to combat the free democratic basic order.<sup>58</sup> Article 17 of the *European Convention on Human Rights* (the “*Convention*”) — often referred to as the “prohibition of abuse of rights clause” — forbids the use of rights guaranteed under the *Convention* to engage in activities aimed at undermining the rights of others.<sup>59</sup> As scholars have summarized, the European Court of Human Rights generally recognizes two main categories of abuse of rights: first, political abuse of rights, which involves using the rights and freedoms granted by the *Convention* to seek the overthrow of liberal democratic institutions, such as forming extremist political parties; and second, exclusive abuse of rights, which involves using the rights and freedoms granted by the *Convention* to deprive others of their rights and freedoms, such as disseminating hate speech.<sup>60</sup> In the case of *Garaudy v. France*, the European Court of Human Rights held that the applicant’s revisionist statements went beyond the limit of political criticism and were in

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<sup>56</sup> *Ng Yat Chi v. Max Share Ltd and Another* (20/01/2005, FACV5/2004) (2005) 8 HKCFAR 1, [2005] 1 HKLRD 473, para. 5.

<sup>57</sup> Peng Zhen, “An Explanation on the the Draft Amendment to the Constitution of the People’s Republic of China,” *The Gazette of the State Council of the People’s Republic of China* 9 (1982).

<sup>58</sup> Wang Kai, “On the Loss of Fundamental Rights in German Law,” *Global Law Review* 3 (2018).

<sup>59</sup> European Court of Human Rights, “Guide on Article 17 of the European Convention on Human Rights,” Updated on February 28, 2025.

<sup>60</sup> Ulrich Wagnardl, “The Prohibition to Abuse One’s Human Rights: A Theory,” *European Law Journal*, vol. 25, no. 6 (2019).

fact aimed at promoting a proven racist agenda, and therefore fell outside the protection of Article 10 (freedom of expression) of the *Convention*.<sup>61</sup>

### **III. The Impact of Prohibiting Abuse of Fundamental Rights**

Although Article 51 of the *Constitution* does not explicitly specify the legal consequences of abusing fundamental rights, it may be inferred from the theory of abusing fundamental rights that such abuse may lead to the forfeiture of those rights. However, when a conflict arises between fundamental rights and public interests or other fundamental rights, a resolution shall be subject to the specific context.

#### **A. The grounds for prohibiting the abuse of fundamental rights**

The concept of abuse of rights originated in private law.<sup>62</sup> Today, the civil codes of most civil law jurisdictions contain provisions prohibiting the abuse of rights. After World War II, the prohibition of rights abuse evolved from private law into public law.<sup>63</sup> Article 12 of the 1946 *Constitution of Japan* stipulates: “The freedoms and rights guaranteed to the people by this constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.” Article 18 of the 1949 *Basic Law of Germany* stipulates: “Whoever abuses the freedom of expression, in particular the freedom of the press, the freedom of teaching, the freedom of assembly, the freedom of association, the privacy of correspondence, posts and telecommunications, the rights of property or the right of asylum in order to combat the free democratic basic order shall forfeit these basic rights. This forfeiture and its extent shall be declared by the Federal Constitutional Court.” Paragraph 1 of Article 29 of the 1965 *Constitution of Romania* stipulates: “Freedom of speech, the press, assembly, meetings, and demonstrations may not be used for purposes hostile to the socialist system and the interests of the working people.” Paragraph 2 of Article 39 of the 1977 *Constitution of the Soviet Union* provides: “Enjoyment by citizens of their rights and freedoms

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<sup>61</sup> *Garaudy v. France*, Application no. 65831/01, Decision of June 24, 2003.

<sup>62</sup> John H. Crabb, “The French Concept of Abuse of Rights,” *Inter-American Law Review*, vol. 6, no. 1 (1964); Wang Yuanzhi, “On the Principle of Prohibition of Abuse of Rights,” *Chinese Journal of Law* 5 (1995); Qian Yulin, “A Jurisprudential Analysis of the Prohibition of Abuse of Rights,” *Modern Law Science* 1 (2002).

<sup>63</sup> Gao Huiming, “On the Prohibition of Abuse of Fundamental Rights,” *Tsinghua University Law Journal* 1 (2015).

must not be to the detriment of the interests of society or the state, or infringe the rights of other citizens.” It is documented that the drafting of China’s 1982 *Constitution* referenced the constitutions of 35 countries.<sup>64</sup> The aforementioned constitutional provisions collectively form the background of Article 51 of the *Constitution*. Besides, provisions prohibiting the abuse of rights are also found in administrative law, procedural law, and international human rights law.<sup>65</sup>

In addition to drawing on theories from private law, the prohibition of the abuse of rights in public law (especially constitutional law) is primarily grounded in two justifications. The first is the theory of the relativity of rights. According to John Stuart Mill, since every individual enjoys the protection of society, they ought to repay something in return to society, and moreover, since everyone inevitably lives within society, they shall observe certain limits in actions that concern others.<sup>66</sup> Legislators, governments, and jurists consider the interests of others not as individuals per se, but instead as units within society.<sup>67</sup> For individuals in society, the exercise of rights will, in all likelihood, have an impact on others. Therefore, like all other things, rights have their limits.<sup>68</sup> The second is the theory of militant democracy. In reflection on the rise of the Nazi regime, the German-born scholar Karl Loewenstein argued that a constitution shall possess certain means to defend against opponents of liberal democracy who exploit its freedoms to undermine the constitutional order of liberal democracy itself.<sup>69</sup> This idea ultimately found its expression in Articles 18 and 21 of the *Basic Law of Germany*, a theory that has been repeatedly invoked by the German Federal Constitutional Court.<sup>70</sup> The

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<sup>64</sup> Wang Hanbin, *An Interview with Wang Hanbin — Personally Experiencing the Development of Socialist Democracy and Legal System in the New Era* (Beijing: China Democracy and Legal System Publishing House, 2012), 53.

<sup>65</sup> Wang Xixin, “Abuse of the Right to Know: Its Logic and Implications,” *Chinese Journal of Law* 6 (2017); Paulien Elsbeth de Morree, *Rights and Wrongs under the ECHR: The Prohibition of Abuse of Rights in Article 17 of the European Convention on Human Rights* (Cambridge: Intersentia, 2016), 99-119.

<sup>66</sup> John Stuart Mill, *On Liberty*, translated by Meng Fanli (Shanghai: SDX Joint Publishing Company, 2019), 85.

<sup>67</sup> Louis Jossierand, *De l'esprit des droits et de leur relativité: théorie dite de l'Abus des droits* (in English: *The Spirit of Rights and Their Relativity: Abuse of Rights Theory*), translated by Wang Boqi (Beijing: China Legal Publishing House, 2006), 6.

<sup>68</sup> Liu Zuoxiang, “The Theory of the Relativity of Rights and Its Debates: With Reference to Louis Jossierand’s ‘Abuse of Rights’ Theory,” *Tsinghua University Law Journal* 6 (2013).

<sup>69</sup> Karl Loewenstein, “Militant Democracy and Fundamental Rights I,” *American Political Science Review*, vol. 31, no. 3 (1937); Karl Loewenstein, “Militant Democracy and Fundamental Rights II,” *American Political Science Review*, vol. 31, no. 4 (1937).

<sup>70</sup> Wang Kai, “On the Loss of Fundamental Rights in German Law,” *Global Law Review* 3 (2018); Cao Hang, “The Self-Defense of Western Democratic Regimes: Research Status and Potential Breakthroughs,” *Chinese Journal of European Studies* 3 (2021).

European Court of Human Rights also relates provisions prohibiting the abuse of rights to the theory of militant democracy.<sup>71</sup> As scholars have noted, the necessity of the proposition regarding the abuse of fundamental rights lies in the following: although the idea that rights are not absolute has been widely accepted, national constitutions typically define fundamental rights in broad and open-ended terms, resulting in unclear limits for these rights; moreover, with the advent of the age of rights, an increasing number of rights are being recognized as fundamental rights, and the proliferation of rights inevitably leads to conflicts among them; introducing the theory of abuse of fundamental rights into the constitutional domain helps clarify the limits of fundamental rights and helps prevent and resolve conflicts among them.<sup>72</sup>

### **B. Legal consequences of abusing fundamental rights**

Article 51 of the *Constitution* stipulates that when exercising their freedoms and rights, citizens shall not undermine the interests of the State, society or collectives, or infringe upon the lawful freedoms and rights of other citizens, the legal consequences of such “infringements,” however, remain unspecified. There are two possible interpretations for this: one is to view Article 51 as a purely declaratory clause; the other is to determine the corresponding legal consequences by taking into consideration the theory of abuse of rights. The former interpretation would render Article 51 devoid of its intended normative force, which makes the latter interpretation more appropriate. According to the theory of abuse of fundamental rights, abuse means that an act ostensibly falls within the factual coverage of a fundamental right, but such an act is not protected by that fundamental right due to the abuse — in other words, the fundamental right is forfeited.<sup>73</sup> In short, when the exercise of a fundamental right constitutes an abuse, the actor may not invoke the abused fundamental right to oppose State intervention. For the State, abuse serves as a shield instead of a sword.<sup>74</sup> That is to say, an abuse of a fundamental right in no way constitutes an independent criminal offense and

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<sup>71</sup> *Ždanoka v. Latvia*, Application no. 58278/00, Judgment of March 16, 2006, § 100; *Perinçek v. Switzerland*, Application no. 27510/08, Judgment of October 15, 2015, § 242; *Ayoub and Others v. France*, Applications no. 77400/14, Judgment of October 8, 2020, § 138.

<sup>72</sup> András Sajó, “Abuse of Fundamental Rights or the Difficulties of Purposiveness,” in *Abuse: The Dark Side of Fundamental Rights*, András Sajó ed. (The Hague: Eleven International Publishing, 2006), 33-49.

<sup>73</sup> Wang Kai, “On the Loss of Fundamental Rights in German Law,” *Global Law Review* 3 (2018).

<sup>74</sup> David Anderson, “Abuse of Rights,” *Judicial Review*, vol. 11, no. 4 (2006).

may not serve as the basis for the State to pursue legal liability. Only when the actor raises a claim based on a fundamental right may the State invoke the abuse rule to exclude the actor's claim. For example, if someone is charged with the crime of advocating terrorism and defends him or herself by invoking freedom of speech, the State may cite the rule against abuse of fundamental rights to reject the actor's claim. Furthermore, it should be noted that what is unprotected is the specific act, not the actor or the abused right itself. In other words, the actor does not forfeit all rights or permanently lose a specific right because of a particular act of abuse.<sup>75</sup>

Take the case of *Hizb Tahrir v. Germany* before the European Court of Human Rights as an example. Hizb Ut-Tahrir, namely the Islamic Liberation Party, claims itself a “global Islamic political party and religious group.” It was founded in Jerusalem in 1953 and advocates for the overthrow of governments in the Muslim world, seeking to replace them with an “Islamic State.” In Germany, Hizb Ut-Tahrir had approximately 200 followers. In January 2003, the German Federal Ministry of the Interior banned the activities of Hizb Ut-Tahrir within German territory, based on German domestic law, on the grounds that the organization advocated achieving political goals through violence. After losing the case in the administrative court, Hizb Ut-Tahrir filed a constitutional complaint with the German Federal Constitutional Court. In December 2007, the German Federal Constitutional Court refused to accept the complaint on the grounds that Hizb Ut-Tahrir had no registered address in Germany and thus lacked standing to appeal. Hizb Ut-Tahrir and its supporters then lodged a complaint with the European Court of Human Rights, claiming that their rights to freedom of religion, freedom of expression, and freedom of association under Articles 9, 10, and 11 of the *European Convention on Human Rights*, had been violated. In June 2012, the European Court of Human Rights declared the complaint of Hizb Ut-Tahrir and its supporters inadmissible under Article 17 of the *Convention*. The Court cited previous case law, emphasizing that “Article 17 removes from the protection of Article 10 comments that are directed against the fundamental values of the *Convention*...” The European Court of Human Rights held that Hizb Ut-Tahrir was using the rights guaranteed by the *Convention* for purposes manifestly contrary to its core

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<sup>75</sup> Ulrich Wagrandl, “The Prohibition to Abuse One’s Human Rights: A Theory,” *European Law Journal*, vol. 25, no. 6 (2019).

values, and thus, under Article 17, could not claim protection under Articles 9, 10, and 11 thereof.<sup>76</sup>

### C. Abuse of fundamental rights to the detriment of public interest

Article 51 of the *Constitution* prohibits citizens, when exercising their freedoms and rights, from undermining the interests of the state, society or collectives, or infringing upon the lawful freedoms and rights of other citizens. Accordingly, abuse of fundamental rights under Article 51 may be categorized into two forms: abuse of fundamental rights to the detriment of public interest, and abuse of fundamental rights to the detriment of the rights of others.<sup>77</sup> These two forms of abuse differ in terms of both the legal interests harmed and the criteria for determination, thus requiring separate examination.

As Professor Cai Dingjian has noted, although citizens' exercise of their rights shall not undermine the public interest, this principle is relative and not easily applied in practice. For instance, when citizens exercise their rights to assembly, procession, and demonstration, it inevitably affects public order. Yet, such an exercise of rights may not be prohibited solely on the grounds of undermining the public interest.<sup>78</sup> Different legal jurisdictions adopt varying standards for determining the abuse of fundamental rights that undermine the public interest. For instance, the European Court of Human Rights focuses primarily on the purpose of the actor: if the actor aims to exploit the freedoms and rights protected under the *European Convention on Human Rights* to engage in activities that undermine those very freedoms and rights, such conduct is deemed an abuse of rights.<sup>79</sup> In contrast, Germany considers both purpose and means, requiring that the actor abusing rights not only intends to overthrow the order of freedom and democracy but also employs appropriate and well-planned means conducive to achieving that objective.<sup>80</sup> Some scholars

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<sup>76</sup> *Hizb Ut-Tahrir and others v. Germany*, Application no. 31098/08, Decision of June 12, 2012.

<sup>77</sup> Some scholars argue that public interest includes State interests and social interests but excludes collective interest, which should fall under the category of others' interests. Ma Ling, "Interests Are Not Rights: An Analysis Based on Article 51 of China's Constitution," *Science of Law: Journal of Northwest University of Political Science and Law* 5 (2009); Chen Peng, "The Emergence and Structure of Legal Reservation of Fundamental Rights in China's Constitution," *Social Sciences in China* 12 (2023). The author maintains that, while such a classification is reasonable to some extent, the determination may be made on a case-by-case basis: if the collective interest represents significant interests of the majority in society, it should be categorized as public interest; otherwise, it should fall under the others' interests.

<sup>78</sup> Cai Dingjian, *Constitution: An Intensive Reading (2<sup>nd</sup> Edition)* (Beijing: Law Press China, 2006), 286.

<sup>79</sup> *Kilin v. Russia*, Application no. 10271/12, Judgment of May 11, 2021, § 21.

<sup>80</sup> Wang Kai, "On the Loss of Fundamental Rights in German Law," *Global Law Review* 3 (2018).

argue that, from the perspective of safeguarding human rights, the determination of the abuse of fundamental rights in China may require subjective malicious intent as a necessary condition, which entails that the actor's conduct clearly violates or deviates from the purpose of fundamental rights and objectively leads to adverse consequences that undermine the rule of law.<sup>81</sup> In terms of consequences, however, the abuse of fundamental rights to the detriment of public interest does not necessitate actual harmful outcomes; rather, it suffices that the conduct creates an abstract (i.e., legally presumed) danger. For example, advocating terrorism is a typical abuse of freedom of speech, and the mere act of advocacy constitutes an abuse, without requiring that anyone actually commits a terrorist offense as a result. Taking various standards and perspectives into consideration, the author contends that the abuse of fundamental rights to the detriment of public interest may be defined as follows: (1) the actor has the intent to undermine the public interest; (2) the exercise of fundamental rights (through action) significantly undermines the public interest; and (3) the infringement exceeds the reasonable limits of fundamental rights.<sup>82</sup> In other words, if the actor lacks intent to undermine the public interest, the exercise of rights does not significantly undermine the public interest, or the infringement does not exceed the reasonable limits of fundamental rights, such conduct may not be deemed an abuse.

At times, citizens may exercise their fundamental rights in ways that conflict with public interest, even without any intent to undermine it. In States that respect human rights and uphold the rule of law, public interest does not hold an absolute priority. Therefore, three principles may be followed when we address conflicts between fundamental rights and public interest. First, the exercise of fundamental rights and public interest may be balanced as much as possible. Take the writing of erotic novels as an example. Some may argue that the creation of such works falls within the realm of artistic freedom, while

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<sup>81</sup> Gao Huiming, "On the Criteria for Determining the Abuse of Fundamental Rights," *Journal of Comparative Law* 1 (2016).

<sup>82</sup> Zhang Yue, "On the Criteria for Determining 'Abuse' in Chinese Law," *Oriental Law* 1 (2022). Some scholars have noted that fundamental rights inherently encompass the authority to "inflict limited infringement." For instance, freedom of speech includes the right to express harsh criticism, and citizens hold the right to call for a boycott against a specific target. Therefore, the exercise of a fundamental right may only be deemed as abuse when the infringement caused demonstrably exceeds the reasonable limits of that right. See András Sajó, "Abuse of Fundamental Rights or the Difficulties of Purposiveness," in *Abuse: The Dark Side of Fundamental Rights*, András Sajó ed. (The Hague: Eleven International Publishing, 2006), 33-49.

others may note that erotic novels could infringe upon the physical and mental well-being of adolescents. When artistic freedom conflicts with the protection of minors, it is neither appropriate to categorically prioritize one value over the other nor to assume that certain types of artistic works inevitably endanger the morality of young people. A more rational approach involves a concrete assessment of the potential risks and consequences of such works, thereby defining their appropriate limits. Legislators shall, with an attitude of practical concordance, conduct thorough deliberations on conflicting rights and interests to ensure that all legal interests are optimally balanced within the constitutional order.<sup>83</sup> Second, the restriction on fundamental rights for the sake of public interest shall follow the principles of legal reservation and proportionality. The overwhelming majority of fundamental rights are not absolute, meaning they may be restricted for the sake of public interest. However, such restrictions shall themselves be subject to “restrictions on restrictions,” including the principles of legal reservation, proportionality, and the protection of the essential content, as reiterated by legal scholars.<sup>84</sup> Third, certain fundamental rights are absolute and shall not be restricted, even for the sake of public interest and in compliance with the principle of proportionality. As scholars have noted, relative rights do not represent the entirety of fundamental rights; some fundamental rights possess absolute and inviolable attributes, including “human dignity” and the “prohibition of torture;” these rights shall be protected absolutely, and there is no room for “justified restrictions” on them, even if requirements including the principle of proportionality or other standards of review are met.<sup>85</sup>

#### **D. Abuse of fundamental rights to the detriment of the rights of others**

Since individuals exist within society, many acts of exercising freedoms and rights may affect or even infringe upon others. For example, freedom of speech may be used to defame others, artistic freedom may be employed to vilify others, freedom of assembly may be utilized to obstruct others, and the right to file charges or reports may be abused to frame or falsely incriminate

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<sup>83</sup> Zhao Hong, “The Freedom to Write Erotica: What Does It Really Mean?” in *The Boundaries of Rights* (Kunming: Yunnan People’s Publishing House, 2023), 190-197.

<sup>84</sup> Zhao Hong, “The Restrictions on Restrictions: The Internal Mechanism of the German Model of Restrictions on Fundamental Rights,” *The Jurist* 2 (2011).

<sup>85</sup> Chen Jinghui, “The Universalization of the Principle of Proportionality and the Nature of Fundamental Rights,” *China Legal Science* 5 (2017).

others. Therefore, Article 51 of the *Constitution* prohibits citizens from abusing their fundamental rights to infringe upon the lawful freedoms and rights of other citizens. Just as it requires a clear definition for abusing fundamental rights to undermine public interest, so does it for abusing fundamental rights to infringe upon the rights of others. Theoretically, three conditions shall be satisfied to determine whether an exercise of fundamental rights constitutes an abuse that infringes upon the rights of others: (1) the actor has the intent to infringe upon the rights of others; (2) the exercise of fundamental rights (as an action) causes infringement to the rights of others; and (3) the infringement exceeds the reasonable limits of fundamental rights. In other words, if the actor lacks the intent to infringe upon the rights of others, if the exercise of rights does not cause infringement to others, or if it does not exceed the reasonable limits of fundamental rights, then it should not be deemed an abuse. The primary distinction between the two types of fundamental rights abuses — undermining public interest and infringing upon the rights of others — lies in the difference in the legal interests infringed upon. Accordingly, when identifying these two types of abuse behaviors, the legal grounds, subjective faults, threshold of infringement, and causation will also differ.

At times, even in the absence of subjective fault, a citizen's fundamental rights may still conflict with those of other citizens. This is due to the proliferation of fundamental rights and the overlapping scopes of their protection. There has been considerable discussion in academic circles regarding how to resolve conflicts between fundamental rights.<sup>86</sup> On the whole, when addressing conflicts between fundamental rights, three principles may be followed: first, the fundamental rights of different subjects may be balanced as much as possible. Although the constitution establishes differentiated legal reservations for various fundamental rights, and although the values of human dignity, life, and liberty are highly esteemed, no fundamental right inherently outweighs another. The "hierarchy of human rights" deviates from the written

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<sup>86</sup> Kwon Young-sung, "The Concurrence and Conflict of Fundamental Rights," translated by Han Dayuan, *Foreign Law Review* (Today's *Global Law Review*) 4 (1996); Zhang Zhihua, "The Conflict of Fundamental Rights and Its Coordination Methods," *Legal Method* 00 (2002); Zhang Xiang, "The Normative Structure and Resolution Models of Fundamental Rights Conflicts," *Studies in Law and Business* 4 (2006); Chen Zheng, "Approaches to Resolving Conflicts Between Constitutional Freedom Rights and Equality Rights," *Zhejiang Social Sciences* 12 (2014); Han Dayuan, "Conflict and Balance Between the Right to Life and Other Rights," *Human Rights* 3 (2020); Wang Kai, "Conflicts of Fundamental Rights and Their Solutions," *Chinese Journal of Law* 6 (2021); Liu Jianlong, "On Conflicts of Fundamental Rights," *Peking University Law Journal* 6 (2021).

constitutions' pursuit of pluralistic values and is inconsistent with the universal legal principle that "human rights are indivisible."<sup>87</sup> Therefore, when addressing conflicts between fundamental rights, the principle of practical concordance shall be applied to delineate boundaries for the conflicting rights, thereby ensuring that both may function with optimal effectiveness.<sup>88</sup> Second, when conflicting fundamental rights fail to be reconciled through practical concordance, a balancing process should be adopted to determine which right shall yield. When simultaneous accommodation is impossible, the balancing of legal interests becomes unavoidable. To reduce subjectivity in this balancing process, a common approach is the "double proportionality analysis," which involves applying a proportionality test separately to each of the conflicting fundamental rights.<sup>89</sup> In balancing legal interests, factors such as the abstract value underlying the fundamental rights, the potential consequences of restricting a fundamental right, and the core scope of the fundamental rights should be taken into consideration.<sup>90</sup> Third, absolute rights shall not be restricted. Some scholars categorize conflicts of fundamental rights based on the dichotomy between positive and negative rights. However, a more meaningful distinction lies between absolute rights and relative rights, as absolute rights are inviolable under any circumstances. Of course, the scope of absolute rights shall be strictly limited to ensure that conflicts do not arise between them (See Table 1).

**Table 1 The Relationship Between Fundamental Rights, Public Interests, and the Rights of Others**

Abuse of fundamental rights to the detriment of public interest	Abuse of fundamental rights to the detriment of the rights of others
Definition: (1) The actor has the intent to undermine the public interest; (2) the exercise of fundamental rights (through an action) significantly undermines the public interest; and (3) the infringement	Definition: (1) The actor has the intent to infringe upon the rights of others; (2) the exercise of fundamental rights infringes upon the rights of others; (3) the infringement

<sup>87</sup> Zhang Xiaoshan, "Is There a Hierarchy of Constitutional Rights?" *Human Rights Studies (Collection)* 1 (2023); Li Haiping, "On the Scope Limitation of the Structure of Fundamental Rights Conflicts," *Studies in Law and Business* 5 (2024).

<sup>88</sup> Liu Jianlong, "On Conflicts of Fundamental Rights," *Peking University Law Journal* 6 (2021).

<sup>89</sup> Andrew Cheung, "Conflict of Fundamental Rights and the Double Proportionality Test," *Hong Kong Law Journal*, vol. 49, no. 3 (2019).

<sup>90</sup> Stijn Smet, *Resolving Conflicts Between Human Rights: The Judge's Dilemma* (London: Routledge, 2017), 141-146.

<p>exceeds the reasonable limits of fundamental rights.                  Examples: (1) Incitement to violence; (2) advocacy of terrorism; (3) establishment of extremist political parties; (4) incitement to ethnic hatred.                  Treatment: The fundamental right is forfeited; the actor may not invoke the abused right to resist State intervention.</p>	<p>exceeds the reasonable limits of fundamental rights.                  Examples: (1) Defamation; (2) malicious speech; (3) vexatious litigation; (4) unauthorized disclosure of others' privacy.                  Treatment: The fundamental right is forfeited; the actor may not invoke the abused right to resist State intervention.</p>
<p>Conflict between fundamental rights and public interest                  Definition: (1) The actor has no intent to undermine public interest; (2) fundamental rights conflict with public interest due to objective circumstances.                  Examples: (1) Property rights vs. urban planning; (2) confidentiality of correspondence vs. national security; (3) personal freedom vs. epidemic prevention and control; (4) artistic freedom vs. protection of minors.                  Treatment: (1) Public interest does not automatically take precedence; efforts shall be made to balance fundamental rights and public interest; (2) if restrictions on fundamental rights are necessary for public interest, they shall comply with the principles of legal reservation and proportionality; (3) absolute rights may not be restricted.</p>	<p>Conflict between fundamental rights                  Definition: (1) The actor has no intent to infringe upon the rights of others; (2) fundamental rights conflict with each other due to objective circumstances.                  Examples: (1) Freedom of the press vs. right to reputation; (2) freedom of religion vs. right to equality; (3) freedom to conduct business vs. freedom to choose occupation; (4) right to privacy vs. right to information.                  Treatment: (1) No fundamental right inherently holds higher status; efforts should be made to balance all conflicting fundamental rights; (2) if balance is impossible, a weighing of legal interests based on the principle of proportionality shall determine which right yields; (3) absolute rights may not be restricted.</p>

## Conclusion

The principle of legal reservation is undoubtedly of great importance for the protection of fundamental rights. Particularly in China today, where numerous administrative regulations and local statutes may restrict citizens' fundamental rights, it helps ensure the legitimacy and rationality of these restrictions to reserve the authority to impose such restrictions for the national legislative body. In this regard, it is undeniable that the establishment of the

principle of legal reservation represents a step forward. However, neither a literal meaning nor an original intent supports the view that Article 51 of the *Constitution* serves as an unenumerated rights clause for legal reservation on the restriction of fundamental rights. Rather than granting legislative bodies the authority to restrict citizens' fundamental rights, Article 51 merely emphasizes that such rights shall not be abused.

Some scholars express concerns that the concepts of inherent limits and the abuse of rights may undermine the protection of fundamental rights. However, robust protection of fundamental rights may also be achieved by clearly defining their scope of protection, strictly distinguishing between protected and unprotected conduct, and precluding legislative bodies from imposing additional restrictions. To prevent legislators from hollowing out fundamental rights, the framers of the *Constitution* deliberately refrained from including an unenumerated rights clause for legal reservation on the restriction of fundamental rights in the 1982 *Constitution*. Only by interpreting Article 51 of the *Constitution* based on its literal and factual grounds, and by consciously resisting the “temptation of legal reservation,” may constitutional scholars live up to the profound intent of its framers.

(Translated by *QI Guohua*)