The Embodiment and Institutional Development of the Principle of "Respecting and Protecting Human Rights" in the *Legislation Law*

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Abstract: *The 2023 amendment to the Legislation Law formally incorporated "respecting and protecting human rights" into the system of legislative principles. However, the prevailing mainstream view, which reduces this principle to a mere subprinciple of democratic legislation, constitutes a clear misinterpretation. An analysis from five perspectives, namely theoretical foundation, policy interpretation, constitutional basis, normative interpretation, and the context of its inclusion in the law, leads to the conclusion that the human rights principle holds an independent status within the entire system of legislative principles. The core link in its implementation lies in the process of converting the principle into rules, which must take into account both procedural norms and substantive rules. Current legislative practice reveals distinct characteristics: the Legislation Law places emphasis on the procedural implementation of the human rights principle, while other laws focus on its substantive implementation. Nevertheless, the excessive emphasis on the procedural dimension in local legislation has given rise to a problematic shift — turning the structural division of labor inherent in central legislative bodies in pursuit of the rule of law goals for human rights protection into a structural contradiction. In response to this issue, two key measures provide important guarantees for the genuine implementation of the human rights legislative principle: optimizing the position of "respecting and protecting human rights" in the text of the Legislation Law; and ensuring that local legislation fully supplements substantive human rights norms.*

Keywords: respecting and protecting human rights ♦ legislative principles ♦ democratic legislation ♦ whole-process people's democracy ♦ 2023 amendment to the *Legislation Law*

I. Introduction

Xi Jinping, general secretary of the Communist Party of China (CPC) Central Committee has stated: "The fundamental purpose of comprehensively advancing law-based governance is to safeguard the rights and interests of the people in

accordance with the law."[1] Specifically, this means that "we must earnestly respect and protect human rights, ensure in accordance with the law that all citizens enjoy extensive rights, protect citizens' personal rights, property rights, personality rights, and basic political rights from infringement, guarantee the realization of citizens' economic, cultural, social, environmental, and other rights, strive to protect the fundamental interests of the people, and protect the people's aspirations and pursuit of a better life"[2]. General Secretary Xi Jinping has also emphasized: "Not every law can govern a country, and not every law can govern a country well; the more we emphasize the rule of law, the more we must improve the quality of legislation."[3] If the 2004 constitutional enshrinement of human rights consolidated the fundamental legal foundation for protecting human rights in accordance with the law in China, then the 2023 amendment to the *Legislation Law*, which formally incorporated "respecting and protecting human rights"[4] as a basic legislative principle, clearly represented a steady step forward in human rights protection under the rule of law in the new era.

Regrettably, the formal incorporation of "respecting and protecting human rights" into the principle system of the *Legislation Law* has failed to attract sufficient attention from the theoretical community. In quantitative terms, papers directly focusing on the implementation of the human rights principle in the legislative process are not only limited in number but were largely published before the 2023 amendment to the *Legislation Law*. Rather than addressing the human rights principle as a legislative principle per se, these works are more accurately attributable to the "long-tail effect" of the 2004 constitutional enshrinement of human rights.[5] In

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[1] Xi Jinping, "Unswervingly Follow the Path of Socialist Rule of Law with Chinese Characteristics and Provide a Strong Legal Guarantee for Building a Modern Socialist Country in All Respects," *Qiushi* 5 (2021): 8.

[2] Compiled by the Publicity Department of the Communist Party of China (CPC) Central Committee and the Office of the Central Committee for Comprehensively Advancing the Rule of Law, *Study Outline of Xi Jinping Thought on the Rule of Law* (Beijing: People's Publishing House, Learning Publishing House, 2025), 33.

[3] Xi Jinping, "Speech at the Fourth Group Study Session of the Political Bureau of the 18th CPC Central Committee," in *Selected Quotations from Xi Jinping's Discourses on Comprehensive Rule of Law*, compiled by the Central Party Literature Research Office (Beijing: Central Party Literature Press, 2015), 43.

[4] The term "human rights principle" as used hereinafter refers to the principle of "respecting and protecting human rights."

[5] Representative works include: Zhang Yin and Xiong Jinghua, "Topics Arising from Beijing's Legislative Practice — How Local Legislation Can Implement the Constitutional Concept of Respecting and Protecting Human Rights," *National People's Congress* 16 (2004): 40-42; Xiong Jinghua, "How Local Legislation Can Implement the Constitutional Concept of Respecting and Protecting Human Rights," *Chinese Cadres Tribune* 1 (2005): 35-36; Wang Shihu, "Implementing the Principle of Respecting and Protecting Human Rights in Legislation and Law Enforcement," *Human Rights* 6 (2007): 29-30. Related discussions include: Li Huoli and Yang Shuai, "A Study on the Relationship between National Human Rights Institutions and National Legislatures," *Tribune of Political Science and Law* 3 (2015): 164-173.

qualitative terms, the vast majority of literature that has incidentally examined this significant textual change in the *Legislation Law* directly and simply links the principle to democratic legislation. This understanding drastically narrows the connotation of human rights and may further undermine the principle's guiding and safeguarding function for the smooth operation of the entire legislative system — its logical rationality is indeed worthy of thorough scrutiny. From the perspective of implementation, how to deeply integrate the human rights principle into the exercise of legislative power should be a core research agenda, yet the current accumulation of findings is seriously inadequate. The questions embedded in the aforementioned state of research directly constitute the core of this paper.

II. The Principle of "Respecting and Protecting Human Rights" Embedded within the Framework of the Democratic Legislation Principles

The direct and exclusive alignment of the human rights principle with democratic legislation in the normative text in fact has long-standing roots: Article 5 of the 2000 *Legislation Law* first established the principle of democratic legislation; the 2015 amendment supplemented this article with the expression "upholding legislative openness," logically adding a core pathway and mechanism for realizing the principle of democratic legislation; the 2023 second amendment relocated the original Article 5 to Article 6, while adding a new paragraph as Paragraph 1 of this article: "Legislation shall uphold and develop whole-process people's democracy, respect and protect human rights, and safeguard and promote social fairness and justice." Thus, in terms of normative development: First, democratic legislation has consistently been a core element in the establishment of a legislative principle system in the *Legislation Law*; second, the incorporation of the expression "respecting and protecting human rights" into the clause of democratic principle provides a possible external interpretive context for exploring the connotations of the human rights legislative principle.

The official articulation on this point is even more direct. On March 5, 2023, Wang Chen, then Vice-Chairman of the Standing Committee of the National People's Congress (hereinafter "the NPC Standing Committee"), stated in the *Explanation on the Amendment Draft of the Legislation Law of the People's Republic of China — Delivered at the First Session of the 14th National People's Congress on March 5, 2023*, when introducing the section on "improving the guiding ideology and principles of legislation": "To improve the principle of democratic legislation and implement the guiding principles of the 20th CPC National Congress and the major concept of

whole-process people's democracy, a new paragraph is added to the current Article 5 of the *Legislation Law*: Legislation shall uphold and develop whole-process people's democracy, respect and protect human rights, and safeguard and promote social fairness and justice (Article 3, Amendment Draft)."[6] Tong Weidong, Director of the National Law Office of the Legislative Affairs Commission of the NPC Standing Committee (hereinafter "the Legislative Affairs Commission"), also elaborated in writing: "In order to implement the guiding principles of the 20th CPC National Congress and the major concept of whole-process people's democracy, the 2023 amendment to the *Legislation Law* supplemented and improved the principle of democratic legislation by adding the provision: 'Legislation shall uphold and develop whole-process people's democracy, respect and protect human rights, and safeguard and promote social fairness and justice.'"[7]

However, the academic perspectives on this issue differ to a certain extent, broadly falling into three categories. The first perspective directly defines the expression "respecting and protecting human rights" along with the rest of Article 6 as constituting the principle of democratic legislation.[8] The second viewpoint, while not directly addressing the human rights principle, touches upon human rights protection and respect for citizens' basic rights within related content such as the principle of legislation for the people and the principle of fairness, justice, and openness, reflecting a notably broader understanding of the connotations of the human rights principle.[9] The third standpoint exhibits a certain structural character: on the one hand, it treats whole-process people's democracy as the direct backdrop for the incorporation of the human rights principle into the text of the *Legislation Law*; on the other hand, it interprets the principle from the substantive content level of human rights protection, holding that "it is of particular significance to emphasize in the *Legislation Law* that the State shall respect and protect human rights, improve the judicial protection system for human rights, and protect people's rights and interests, thereby enabling the people to feel fairness and justice in every judicial case."[10]

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[6] Wang Chen, "Explanation on the Amendment Draft of the Legislation Law of the People's Republic of China — Delivered at the First Session of the 14th National People's Congress on March 5, 2023," National People's Congress website, March 6, 2023, accessed March 19, 2025, http://www.npc.gov.cn/c1773/c1848/c21114/lffxz/lffxz007/202303/t20230306_423962.html.

[7] Tong Weidong, "The Contemporary Context and Content Interpretation of the New Legislation Law," *China Law Review* 2 (2023): 195.

[8] Zhu Liyu and Ye Chuanxing, *Legislative Studies (5th edition)* (Beijing: China Renmin University Press, 2023), 61; Wu Chuanyi, "Viewing the Amendment to the Legislation Law through the Lens of 'China's Governance'," *People's Friend* 4 (2023): 41; Luo Shi, "Understanding and Reflections on the Amendment to the Legislation Law," *People's Congress Studying* 5 (2023): 35; Sun Ying, "The Amendment to the Legislation Law Will Surely Promote High-quality Development of Local Legislation," *Ren Min Zhi Sheng (People's Voice)* 4 (2023): 61.

[9] Liu Ping, *Legislative Principles, Procedures, and Techniques* (2nd edition) (Shanghai: Xuelin Press, 2024), 95-99.

[10] Feng Yujun, "Proposals and Rationale for Amending the Legislation Law," *Journal of Zhejiang Gongshang*

In summary, democratic legislation — especially the formal establishment of whole-process people's democracy in 2023 — constitutes to a considerable extent the direct backdrop for the incorporation of the human rights principle into the *Legislation Law*. However, it remains a question, which requires thorough discussion, whether one should, based on the structural incorporation of the human rights principle into the democratic legislation clause, directly conclude that the interpretation of this principle is confined to democratic connotations and frameworks.

III. The Independent Value of "Respecting and Protecting Human Rights" as a Legislative Principle

The fundamental thesis of this paper is that the human rights principle constitutes a basic legislative principle with relatively independent value; understanding it solely as a sub-principle of democratic legislation would diminish the value it rightfully holds within the legislative system. This can be elaborated from the following five dimensions.

First, theoretical foundation. Jacques Maritain observed: "The most central and fundamental purpose for which people gather into a political community is to protect the common good of the populace, thereby enabling every concrete individual — not members of some privileged class, but all persons — to genuinely attain the independence peculiar to civilized life."[11] John Locke likewise, grounded in his firm conviction that "the welfare of the people shall be the supreme law" (*salus populi suprema lex*), held that the enactment of laws must "take care to secure the public good."[12] "Human rights are our only commonly shared bulwark against evils."[13] As an important mission of the modern rule of law, the protection of human rights is manifested in at least three respects. First, the effectiveness of human rights protection bears directly on the legitimacy of modern legislation. From the perspective of human rights, and in line with James Griffin's understanding, the foundation of human rights lies in personal autonomy, freedom, and a minimum provision of goods.[14] The protection and realization of these three essential elements are precisely the inherent values of the modern rule of law. Regarding legislative legitimacy, one scholar has

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University 6 (2014): 6.

[11] Jacques Maritain, *The Rights of Man and Natural Law*, Wu Yan trans. (Beijing: The Commercial Press, 2020), 35.

[12] John Locke, *Natural Rights*, Zheng Yu trans. (Changchun: Jilin Publishing Group Co., Ltd., 2018), 211.

[13] Lynn Hunt, *Inventing Human Rights: A History*, Shen Zhanchun trans. (Beijing: The Commercial Press, 2011), 162.

[14] James Griffin, *On Human Rights*, Xu Xiangdong and Liu Ming trans. (Nanjing: Yilin Press, 2015), 62.

noted: "Discussions about legislative legitimacy, from the legislator's perspective, emphasize that legislation should serve the realization of certain specific goals — for instance, moral principles such as justice. Or it should conform to certain utilitarian standards — for example, contributing to economic growth and achieving the greatest happiness for the greatest number of people."[15] Another scholar maintains: "The theoretical and practical essentials of scientific legislation are multifaceted; among them is the scientific and appropriate stipulation of rights in legislation."[16] Democratic legislation is logically concentrated primarily on procedural issues and clearly cannot encompass the full connotation of comprehensively respecting and protecting human rights, including "the common good of the populace" and "the greatest happiness for the greatest number of people." Second, Karl Marx stated: "The legislator, however, must regard himself as a natural scientist. He does not make the laws; he does not invent them; he only formulates them; he expresses the inner laws of spiritual relationships in conscious, positive laws."[17] One scholar has argued from this viewpoint that the legislative process is a process of discovering people's innate rights.[18] Therefore, incorporating the human rights principle into the *Legislation Law* is the logical extension of the law's normative identity as the "law governing laws," ensuring that all legislation can achieve the supreme goal of respecting and protecting human rights. It should rightly incorporate the procedural requirements of democratic legislation, but more fundamentally, it serves to affirm the human rights value of the entire law-based governance system established through the democratic legislative process. Third, the comprehensive respect for and protection of human rights through legislation is of particular significance for socialist modernization with Chinese characteristics. The 2021 white paper *The Great Practice of the Communist Party of China in Respecting and Protecting Human Rights* devotes a dedicated section to China's human rights legislation, spanning from the legal reservation principle under the *Legislation Law*, to the principles of *nullum crimen sine lege*, equal application of criminal law, and proportionality between crime and punishment under the *Criminal Law*, and to the presumption of innocence, exclusion of illegally obtained evidence, and protection of the human rights of suspects, defendants, and convicts as prescribed under the Criminal Procedure Law; from the protection of personal freedom and

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[15] Ge Hongyi and Fu Jiaqi, "The Scope and Definition of Basic Issues in Legislative Studies," *Zhejiang Social Sciences* 1 (2025): 67.

[16] Zhang Hengshan, "A Study of Linguistic Paradigms for Rights Provisions in Legislation," *Administrative Law Review* 2 (2025): 80.

[17] Karl Marx, "The Divorce Bill," *Marx and Engels Collected Works*, vol. 1 (Beijing: People's Publishing House, 1956), 183.

[18] Liu Ping and Fang Guangliang, "The Establishment and Role of a Function-Oriented View of Legislation — Based on Human Rights Protection and the Restraint of Public Power," *Dongyue Tribune* 2 (2017): 102.

human dignity under the *Civil Code*, to the protection of citizens' personal rights under the *Administrative Penalty Law* and the *Administrative Compulsion Law*. The coverage is broad, the content substantive, and the structure clearly delineated. Since "legislation, as a political activity, can reduce arbitrariness and become institutionalized and controllable only when it is legalized,"[19] the value of formally incorporating human rights as a legislative principle into the *Legislation Law* necessarily extends far beyond the narrow connotation of democracy in the legislative process.

Second, policy interpretation. When the 19th CPC National Congress in 2017 articulated the proposition of "strengthening human rights protection under the rule of law," it clarified a triple context from the standpoint of discourse coherence: first, it emphasized the premise of "upholding the unity, dignity, and authority of the national legal system," meaning that the entire national legal framework provides a comprehensive protection mechanism for human rights protection under the rule of law; second, it emphasized the goal of "ensuring that the people enjoy extensive rights and freedoms in accordance with the law," meaning that such protection targets the broad (rather than any specific domain of) rights landscape; third, it preceded these points with an elaboration of democratic governance concepts including democratic legislation — namely, "expanding orderly political participation by the people, and ensuring that the people conduct law-based democratic elections, consultations, decision making, management, and oversight" — with the use of a semicolon in particular underscoring its parallel logical status with the human rights theme. As the most direct top-level design backdrop for the 2023 amendment to the *Legislation Law*, the report to the 20th CPC National Congress in 2022 reiterated the tripartite formulation of "legislative work in a well-conceived manner, through a democratic process and in accordance with the law" on two occasions. The establishment of this tripartite structure directly led to the addition of Article 55 in the 2023 amended *Legislation Law*, with corresponding provisions made in the principle clauses through Articles 7, 6, and 5, respectively. On the one hand, "upholding the unity, dignity, and authority of the socialist legal system," which serves as the prerequisite for human rights protection under the rule of law, was incorporated into Article 5 of the *Legislation Law* as the principle of legislation in accordance with the law. On the other hand, the principled requirement that "legislation shall scientifically and rationally prescribe the rights and obligations of citizens, legal persons, and other organizations, as well as the powers and responsibilities of state organs," which is directly linked to human rights protection under the rule of law, was incorporated into

[19] Ge Hongyi and Fu Jiaqi, "The Scope and Definition of Basic Issues in Legislative Studies," *Zhejiang Social Sciences* 1 (2025): 76.

Article 7 of the *Legislation Law* as the principle of scientific legislation. Therefore, confining the human rights principle to the interpretive framework of democratic legislation alone is inconsistent with the aforementioned policy intent.

Third, constitutional basis. Georg Jellinek observed: "Clarifying the true boundary between the individual and the social community is the supreme problem that any far-sighted human society must resolve."[20] In a modern constitutional state, the delineation of this boundary falls primarily and foremost within the "range" of constitutional norms. Even though the *Legislation Law* sets forth a complete system of legislative principles in Chapter I, its most fundamental purpose must still be traced back to the fundamental law — this is the inherent implication of Article 1: "This Law is enacted in accordance with the *Constitution*." Specifically, first, the expression of the human rights principle derives from the 2004 constitutional amendment, which added "the State respects and protects human rights" to Article 33.[21] Over the course of long-term legislative practice, three basic legislative principles — the rule of law, democracy, and science — gradually took shape. The *Legislation Law,* formally adopted in March 2000, represented a major breakthrough from the draft version formulated in January of that year by incorporating the "constitutional principle,"[22] which in effect created the fundamental logical pathway for "the State respects and protects human rights," introduced by the 2004 constitutional amendment, to be included in the *Legislation Law*. Second, the current *Constitution*, on the one hand, lays a solid foundation for "the democratic principle in the exercise of legislative power" through its General Provisions, which set forth the principles of the people's democratic dictatorship, the people's management of affairs in all fields through various channels and forms in accordance with the law, and democratic centralism — that democracy falls within the "natural range" of human rights is beyond doubt. On the other hand, Chapter II of the *Constitution* enumerates an important system of basic rights categories, and the 2004 constitutional enshrinement of human rights further consolidated the ideological and value foundation of this system, providing a clear substantive content for the human rights principle as the outcome of the exercise of legislative power (i.e., legislation), thereby rendering legislation a concrete institutional mechanism for these rights, which are "regarded as part of the objective organizational principles of the established constitutional order"[23] In summary, from the perspective of the fundamental law, the democratic principle and the human rights

[20] Georg Jellinek, *The Declaration of the Rights of Man and of the Citizen*: *A Contribution to Modern Constitutional History*, Li Jinhui trans. (Beijing: The Commercial Press, 2013), 58.

[21] The literature on the human rights clause of the Constitution is voluminous and will not be elaborated here.

[22] Zhou Wangsheng, "On the Legalization and Institutionalization of China's Legislative Principles," *Legal Forum* 3 (2003): 31.

[23] Martin Loughlin, *Foundations of Public Law*, Zhang Xiaoyan trans. (Shanghai: Fudan University Press, 2023), 530.

principle are by no means in a simple relationship of subsumption; rather, they present a structure of interlocking embedding: the democratic principle constitutes the content of the human rights principle, while the human rights principle is the purpose of the democratic principle. Reducing the human rights principle to a sub-principle of the democratic principle undermines the full implementation of the human rights principle and impedes a comprehensive understanding of the democratic principle.

Fourth, normative interpretation. The 2023 amendment to the *Legislation Law* adjusted the provision on the principle of democratic legislation by adding expressions such as whole-process people's democracy, respecting and protecting human rights, and safeguarding and promoting social fairness and justice, while retaining the original text that "legislation shall reflect the will of the people, promote socialist democracy, uphold openness in legislation, and ensure the people's participation in legislative activities through various channels." If the human rights principle were directly equated with democratic legislation, then even with "whole-process people's democracy" as a supplementary context, the specific inclusion of "respecting and protecting human rights" would still be logically redundant. Article 13.4.3 of the *Legislative Technical Standards*, issued by the Legislative Affairs Commission of the NPC Standing Committee in 2024, provides: "Where a sentence contains two tiers of coordinate relationships, enumeration commas (*dunhao*) shall be used between elements at the lower tier, and commas between elements at the higher tier." Although Paragraph 1 of Article 6 of the *Legislation Law* does not employ enumeration commas, it contains three instances of the character "和" (*he*, meaning "and"). In accordance with Article 13.4.1 of the *Legislative Technical Standards*, which stipulates that "where coordinated elements in a sentence have no distinction of primary and secondary importance, the character '和' shall serve as a conjunction," this character in fact establishes coordinate relationships among "uphold" and "develop," "respect" and "protect," and "safeguard" and "promote," with a grammatical effect essentially identical to that of the enumeration comma. Furthermore, the two commas in Paragraph 1 of Article 6 actually construct a coordinate relationship among the three expressions: "uphold and develop whole-process people's democracy," "respect and protect human rights," and "safeguard and promote social fairness and justice." In short, although "respecting and protecting human rights" and "upholding and developing whole-process people's democracy" overlap in content, they occupy at least the same level in normative expression; the judgment that a relationship of subsumption exists between them lacks the necessary hermeneutic support. Accordingly, if one steps beyond the fragmented mindset that examines clauses in isolation and re-examines the three clauses of Paragraph 1 of Article 6 from a holistic perspective, it becomes evident that the

relationship among them is by no means the general-to-specific (total-part) relationship that the prevailing view infers directly from the sentence form. Rather, they reflect a distinctly progressive logic: "whole-process people's democracy" captures the direct requirement of legislation; "respecting and protecting human rights" represents an abstraction and elevation built upon legislative democracy; and "safeguarding and promoting social fairness and justice" constitutes the implementation orientation and regulatory objective of this legislative principle.

Fifth, the opportunity for inclusion in the law. This issue points directly to the source of the one-sided stance that treats the human rights principle as a sub-principle of democratic legislation. As Mark Van Hoecke observes: "If the addressees of norms are to interpret and apply norms correctly, they should also take into account the purposes of the norm-giver."[24] Since placing the human rights principle in Article 6 of the *Legislation Law* may give rise to misreading, why did the legislator insist on such an arrangement? A deeper puzzle lies in this: even if the omission of a human rights principle from the 2000 *Legislation Law* can be attributed to the political discourse and theoretical understanding at the time — rendering the formulation incomplete — subsequent developments should have removed any such obstacle.[25] "Respect and protection of human rights" was enshrined in the Constitution in 2004; the 18th CPC National Congress in 2012 affirmed that "human rights are fully respected and protected"; and the Fourth Plenary Session of the 18th CPC Central Committee in 2014 reiterated this commitment and upheld the principles of scientific and democratic legislation, and also explicitly established the grassroots legislative contact point system, which has since proven highly effective in advancing democratic legislation.[26] Given all this, why did the 2015 amendment to the *Legislation Law* still fail to incorporate the human rights principle in a "timely" manner? In other words, why did 2023 become the "human rights moment" for the *Legislation Law*? No explicit official explanation has yet been seen. The author believes that there are roughly two leads worth noting. The first is the policy lead. As the cause of socialism with Chinese characteristics has entered deeper waters of development, and as domestic and international human rights issues and dynamics

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[24] Mark Van Hoecke, *Law as Communication*, Sun Guodong trans. (Beijing: Law Press • China, 2023), 119.

[25] Yang Zongke, "The Improvement of the Principle of Legislation in Accordance with the Constitution by the Legislation Law," *Political Science and Law* 11 (2023): 89.

[26] Strictly speaking, the Fourth Plenary Session of the 18th CPC Central Committee only formally established this system at the national level, but the institutional practice of grassroots legislative contact points can in fact be traced back to July 2002, when the Standing Committee of the Gansu Provincial People's Congress designated the Standing Committee of the Lintao County People's Congress as a grassroots legislative contact point. See Yang Weiwei, "Lintao's Grassroots Legislative Contact Points: Let the People's 'Golden Ideas' Board the 'Express Train' of National Legislation," National People's Congress Website, May 15, 2024, accessed March 18, 2025, http://www.npc.gov.cn/c2/c30834/202405/t20240515_437080.html.

have become increasingly complex in recent years, the question of where the human rights cause with Chinese characteristics in the new era is headed has become a significant factor in the process of modernizing the governance system and capacity. The report to the 19th CPC National Congress in 2017 called in principle for "strengthening human rights protection under the rule of law"; in February 2022, General Secretary Xi Jinping emphasized in his speech at the 37th group study session of the Political Bureau of the 19th CPC Central Committee that we must steadfastly follow the path of human rights development with Chinese characteristics to promote further progress in human rights, with particular emphasis on human rights protection under the rule of law;[27] it was proposed in the report to the 20th CPC National Congress in October 2022 that "we will follow a Chinese path of human rights development, actively participate in global human rights governance, and promote all-around advancement of human rights." In the process of implementing the guiding principles of the 20th CPC National Congress to "build a modern socialist country in all respects under the rule of law," the establishment and realization of the human rights principle in legislation — as the source of legal supply — was naturally placed on the agenda. The second is the legal lead. After General Secretary Xi Jinping formally put forward the scientific proposition of "whole-process people's democracy" during his inspection of Hongqiao Sub-district in Shanghai in 2019, the 2021 amendment to the *Organic Law of the National People's Congress* provided in Article 4: "The National People's Congress and its Standing Committee adhere to whole-process democracy, maintain close contact with the people at all times, listen to their opinions and suggestions, reflect their will, and safeguard their rights and interests." This marked the first time that "whole-process democracy" was introduced into law, and also explicitly linked it directly to "maintaining close contact with the people, listening to their opinions and suggestions, reflecting their will, and protecting their rights and interests" — expression that carries the connotation of "respecting and protecting human rights." Given that legislative affairs occupy a considerable proportion in the institutional framework of powers and functions of the NPC and its Standing Committee, this provision in effect laid the preliminary normative foundation for the close association between human rights and whole-process people's democracy in the legislative context. As the "whole-process people's democracy" was successively incorporated into the 2022 amendments to the *Organic Law of Local People's Congresses* and *Local People's Governments of the People's Republic of China* and the *Rules of Procedure of the Standing Committee of the National People's Congress*, the aforementioned normative logic of "legislation + democracy + human

[27] Xi Jinping, "Steadfastly Following the Chinese Path to Promote Further Progress in Human Rights," *Qiushi* 12 (2022): 4-10.

rights" was further reinforced. On this point, three interim conclusions can be drawn. First, given the lagging nature of law — particularly the consideration of securing prudence through the preliminary phased implementation of institutions — the text of the *Legislation Law* does not necessarily require the immediate absorption of guiding principles of relevant policies; that is, "'promptly' ≠ 'the first possible opportunity.'"[28] Second, if one steps beyond the constraints of the aforesaid two background leads and surveys the process by which the human rights principle entered the text of the *Legislation Law* from a macro perspective, it can be seen that whole-process people's democracy constitutes the opportunity for the human rights principle's entry into the *Legislation Law*, but it is by no means the sole foundation for that process. Third, the introduction of whole-process people's democracy does not necessarily imply full coverage of both substantive and procedural issues, because the process by which the human rights principle entered the *Legislation Law* has been dual-phased: the first phase is its connection with the principle of democratic legislation, that is, taking Article 6 of the *Legislation Law* directly as the general foundation for the principles of scientific legislation, democratic legislation, and legislation in accordance with the law in Article 55; the second phase is the elevation of the traditional "democracy" in the legislative context — which appears somewhat thin in connotation for the new era — to "whole-process people's democracy." This is intuitively illustrated by comparison with the expression "carrying forward socialist democracy" in Article 5 of the 2015 amended *Legislation Law*. In summary, to simply conclude on the basis of the textual structure of Article 6(1) that the principle of democratic legislation and the human rights principle stand in a relationship of subsumption within the system of principles, and thereby to confine the latter to the dimension of democraticness in the legislative process, does not necessarily possess sufficient logical necessity.

IV. Institutional Development of "Respecting and Protecting Human Rights" as a Legislative Principle

The human rights principle in the *Legislation Law* can be traced back to Article 33(3) of the *Constitution*. Although scholars have attempted to deconstruct the application pathway of the constitutional human rights clause from the perspectives of fact-finding, constraints on the interpretation of specific legislative provisions, and the impact on the subsumption of facts under legal norms,[29] the implementation of the

[28] A situation similar to the human rights principle is that the grassroots legislative contact point system, established by the Fourth Plenary Session of the 18th CPC Central Committee in 2014, was not hastily incorporated into the first amendment to the Legislation Law in 2015, but was not formally written into law until 2023.

[29] Zhu Yingping, *Research on the Technical Norms for Judicial Application of Constitutional Human Rights Clauses* (Beijing: China Democracy and Legal System Publishing House, 2016), 241-246.

constitutional human rights clause still relies primarily on a normative system centered on legislation. The implementation process of the human rights principle in the *Legislation Law* thus serves as the pivotal link in this logic.

A. The "principle" of respecting and protecting human rights and its connection to rules

Although "respecting human rights" and "protecting human rights" frequently appear together, they differ in emphasis: the former leans towards the conceptual and subjective dimension, elevating reverence for human rights to a moral imperative;[30] the latter leans toward objective mechanisms, manifesting in the legislative domain as the robust protection of the objective content of human rights through legislative procedures and their outputs (positive legal rules). This does not necessarily mean, however, that the two correspond respectively to the state's negative and positive obligations,[31] since "respecting" human rights constitutes, to a considerable extent, the common foundation of both.

How should we understand the normative designation of "respecting and protecting human rights" entering the *Legislation Law* as a principle? For Robert Alexy, a principle is an optimization command — a norm that requires something to be realized to the greatest extent possible within the bounds of what is factually and legally feasible.[32] How should this dual "to the greatest extent possible" requirement be manifested? First, in terms of scope, with the enshrinement of human rights clauses in the Constitution, the legislature bears a mandatory obligation to protect and realize human rights through active legislation.[33] The fulfillment of this obligation is logically manifested both in the legislature's process of exercising legislative power — i.e., the human rights principle guiding and regulating legislative procedures — and in the legislative products formed under its guidance, namely, specifically designed human rights protection systems embedded in enacted law. Second, in terms of content, legislation is essentially a means of social interests allocation. The human rights legislative principle requires that human rights protection serve as the value choice, keeping conflicts and imbalances among interests within reasonable bounds and bringing order to a pluralistic structure.[34] The implementation of human rights as

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[30] Chen Jinzhao, "'Respecting and Protecting Human Rights' in the Exercise of 'Legal Interpretation Power'," *Political Science and Law* 1 (2019): 72.

[31] Liu Zhiqiang, *Theoretical Construction of Chinese Human Rights Jurisprudence* (Beijing: The Commercial Press, 2023), 144.

[32] Robert Alexy, *A Theory of Constitutional Rights*, Lei Lei trans. (Beijing: China Legal Publishing House, 2012), 132.

[33] Qin Qiang, "Research on the Legislature's Obligation of Human Rights Legislation — Against the Background of the Constitutional Enshrinement of Human Rights Clauses," *Northern Legal Science* 5 (2012): 47.

[34] Zhang Yin and Xiong Jinghua, "Topics Arising from Beijing's Legislative Practice — How to Implement the Constitutional Concept of Respecting and Protecting Human Rights in Local Legislation," *National People's*

a legislative principle, therefore, necessarily engages with the specific rights contained within the concept of human rights.[35] Combined with the scope perspective above: If the human rights legislative principle as a right of (legislative) participation is more closely tied to procedural regulation, then the specific human rights protection systems within legislative products clearly point to a broader domain. Third, in terms of hierarchy, the status of "respecting and protecting human rights" as a legislative principle emphasizes both the moral standards it imposes on legislation at the level of ideals and consciousness, and the concrete implementation — and even realization — at the level of specific legal mechanisms. The logic of extension and conversion from principle to rule thus becomes the critical link for human rights to be fully established in legislation as both a concept and an institution.

Ronald Myles Dworkin has offered a classic definition of the relationship between principles and rules: "Unlike rules, principles have a dimension of weight or significance."[36] Christian Dahlman adds: "Rules are more predictable, whereas principles are more flexible."[37] Following the "legislative procedure–institutional product" dichotomy established above regarding the scope of application of the human rights legislative principle, the establishment of human rights legislative rules likewise encompasses two levels. First, the dual establishment of human rights legislative requirements across both procedural and substantive domains. These two processes are not fully synchronized: procedural rules for human rights legislation enjoy a degree of priority, yet the two should advance in concert. The establishment of procedural rules is primarily manifested in the normative framework for central and local legislative procedures centered on the *Legislation Law*. Among them, Chapters 2 through 5 of the *Legislation Law* are designed around the construction of human rights protection, while local legislative procedural provisions — grounded in Article 84(1) and Article 94 of the *Legislation Law* — play an important role in ensuring the comprehensiveness and granularity of human rights legislative rules. The establishment of substantive rules corresponds to what is traditionally termed "human rights legislation."[38] At both central and local levels, this is achieved primarily through legislation other than procedural legislation, in the process of establishing specific mechanisms for respecting and protecting human rights. Second, once the

Congress 16 (2004): 40.

[35] Liu Zhiqiang, *Theoretical Construction of Chinese Human Rights Jurisprudence* (Beijing: The Commercial Press 2023), 212-214.

[36] Ronald Dworkin, *Taking Rights Seriously*, Xin Chunying & Wu Yuzhang trans. (Beijing: Encyclopedia of China Publishing House, 1998), 45-46.

[37] Luc J. Wintgens, *Legisprudence: A New Theoretical Approach to Legislation*, Zhu Shulong trans. (Beijing: The Commercial Press, 2022), 102.

[38] For an analysis of the connotation of human rights legislation and its broad and narrow definitions, see Qin Qiang, "Research on the Legislature's Obligation of Human Rights Legislation — Against the Background of the Constitutional Enshrinement of Human Rights Clauses," *Northern Legal Science* 5 (2012): 47.

human rights legislative rule system is in place, coherence assessments should be conducted from two dimensions: (1) coherence among individual human rights rules, since "individual norms are not linked together in an unorganized, chaotic fashion; rather, in the ideal case, the legal order is conceived as a whole — a system and 'construction of meaning' in which value judgments are as consistent as possible"[39]; and (2) coherence between the human rights legislative rule system and the human rights legislative principle itself, since "legal rules must also cohere with more fundamental legal principles — principles that underlie legal concepts, branches of law, or the entire legal system."[40] This provisional conclusion serves as the evaluative benchmark for the subsequent analysis of how China's human rights legislative principle has been implemented.

B. The structure of human rights protection clauses in the *Legislation Law*

First, the purpose clause of the *Legislation Law*, i.e., Article 1. The 2015 amendment to the *Legislation Law* added the expression "giving full play to the guiding and driving role of legislation" to Article 1. The key considerations behind this include, on the one hand, the goal of building a moderately prosperous society in all respects,[41] and on the other hand, the historical and stage-specific demands of the "deep water zone" of deepening reform. Regarding the former, General Secretary Xi Jinping has pointed out with profound insight: "The dream of a moderately prosperous society, the dream of a strong country, and the Chinese Dream ultimately come down to the people's 'dream of happiness'."[42] In his congratulatory letter to the symposium marking the 70th anniversary of the *Universal Declaration of Human Rights* on December 10, 2018, General Secretary Xi Jinping also explicitly stated: "Living a happy life is the primary human right."[43] As for the latter, this is reflected in the profound background noted in the fact that: "The landscape of interests involved in many areas such as education, healthcare, housing, elderly care, employment, the environment, resources, income distribution, and urban-rural coordination is extremely complex. There is an ever-growing need to identify the root causes of problems and find solutions through institutional mechanisms, and an ever-growing need for systematic planning, top-level design, and comprehensive supporting measures at the institutional level."[44] Since the 2023 amendment to the *Legislation*

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[39] Ernst A. Kramer, *Juristische Methodenlehre*, Zhou Wanli trans. (Beijing: Law Press • China, 2019), 55-56.

[40] Mark Van Hoecke, *Law as Communication*, Sun Guodong trans. (Beijing: Law Press • China, 2023), 248.

[41] National Law Office of the Legislative Affairs Commission of the NPC Standing Committee: *Interpretation of the Legislation Law of the People's Republic of China* (Beijing: Law Press • China, 2015), 3.

[42] "The Chinese Dream Ultimately Comes Down to the People's 'Dream of Happiness' — Great Dreams Gather the Strength of Unity and Struggle ②", *Peoples' Daily*, November 30, 2022, 1.

[43] Xi Jinping, "Protect and Promote Human Rights in the Chinese Context," in *Xi Jinping: The Governance of China III* (Beijing: Foreign Languages Press, 2020), 288.

[44] National Law Office of the Legislative Affairs Commission of the NPC Standing Committee, *Interpretation of*

Law did not alter the content of Article 1, the aforementioned purpose of human rights protection remains in force to this day.

Second, the relevant procedural clauses of the *Legislation Law*, which primarily specify the participation rights of various actors through the design of democratic mechanisms, fall roughly into four categories. The first category: the core clauses are concentrated in Sections 2 and 3 of Chapter II, i.e., the provisions governing the legislative procedures of the National People's Congress (NPC) and its Standing Committee. This structural arrangement derives in essence from the central position of laws in China's legislative system, while technically taking account of the fact that, under Article 87(1) of the *Legislation Law*, local legislative procedures can in principle "share resources" with the aforementioned democratic procedural clauses. This cluster of clauses can be further divided into three subcategories. The first is the right of NPC deputies to submit motions under Article 18(1), which constitutes an important basis for extending the principle of democratic legislation to the initiation stage of the legislative process. The second comprises provisions on soliciting opinions from various actors in diverse forms on various legislative documents — the largest in scale — including but not limited to Article 19(2), Articles 20, 21, 24, 39, 56, and Article 57(2), among others. The third concerns legislative information sharing and publicity at different levels or on different occasions, such as Article 58, which requires that when a legislative bill is introduced, the draft text and its explanation, necessary reference materials, opinions on constitutional compliance, and the coordination of major disagreements be submitted together; Article 70 on the grassroots legislative contact point system; and Article 71 on the legislative publicity mechanism. Among them, Articles 70 and 71 are both new additions introduced by the 2023 amendment. Besides, Article 40 covers both the public disclosure of draft laws and their drafting or revision explanations, and the solicitation of public comments on the disclosed content, as well as the requirement to report back on the comments received. The second category: in the provisions on the procedures for formulating administrative regulations, Article 74 primarily emphasizes the requirement to solicit opinions extensively from various actors in different forms. The third category: in the procedures for local legislation, although the aforementioned democratic provisions apply by reference through the directive function of Article 87(1), the *Legislation Law* nonetheless specially emphasizes in Article 90 the system by which standing committees of local people's congresses at two levels solicit public opinions through the establishment of grassroots legislative contact points. This creates a corresponding relationship between the central and local legislative systems vis-à-vis the grassroots legislative contact point system established by the NPC

the Legislation Law of the Peoples' Republic of China (Beijing: Law Press • China, 2015), 5.

Standing Committee under Article 70, further underscoring the implementation of democratic requirements in legislative procedures. The fourth category: in the filing and review stage, the key clauses cover the system for various social entities to submit review suggestions under Article 110(2), and the requirement under Article 113 for review outcomes to be made public.[45]

Third, the substantive clauses on human rights protection. Although the current *Legislation Law* contains relatively few substantive clauses directly targeting human rights protection, they exhibit a clear logical structure and hierarchical features. First, Article 11, in delineating the scope of legal reservation, explicitly includes matters closely related to human rights protection, such as crimes and punishments, citizens' political rights and personal freedom, taxation, expropriation and requisition of non-state-owned property, basic civil systems, and litigation and arbitration systems.[46] In conjunction with Article 12, matters even more closely tied to human rights protection—crimes and punishments, citizens' political rights and personal freedom, and the judicial system—are further designated as matters of absolute legal reservation[47]. Secondly, as for the general substantive rules on human rights protection, a typical manifestation is Article 104, which stipulates "better protection of the rights and interests of citizens, legal persons, and other organizations" as an exception to the principle of non-retroactivity of law. Given the fundamental feature that "the *lex mitior* exception generally applies in the public law domain," this clause logically breaks through, to a certain extent, the framework of general rights and interests, thereby acquiring a more human-rights-oriented directional foundation. Thirdly, as for the specific substantive rules on human rights protection, they are mainly reflected in Article 91(2) and Article 93(6), which respectively impose restrictions on departmental rules and local government rules that diminish the rights of citizens, legal persons, and other organizations or increase their obligations. The reason for raising the aforementioned requirements specifically with respect to rules is that the legislative character of rules themselves has long been controversial; more importantly, from a practical standpoint, rules occupy the lowest level of validity in the legal norm system and primarily serve a function of detailed regulatory specification, and "there are relatively many existing problems, which must be regulated and supervised."[48]

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[45] For a dedicated exposition by Wang Shihu, then Deputy Director of the National Law Office of the Legislative Affairs Commission of the NPC Standing Committee, see Wang Shihu, "Implementing the Principle of Respecting and Protecting Human Rights in Legislation and Law Enforcement," *Human Rights* 6 (2007): 29-30.

[46] For the specific human rights content associated with these matters, see Feng Yujun, *Detailed Commentary and Application Guide to the New Legislation Law* (2nd edition) (Beijing: Law Press • China, 2024), 35-41.

[47] Ibid., 48-49.

[48] Qiao Xiaoyang, *Lectures on the Legislation Law of the People's Republic of China (Revised edition)* (Beijing: China Democracy and Legal System Publishing House, 2008), 278.

It should be noted that, in light of the guiding principle of "coordinating enactment, amendment, repeal, interpretation, and codification" articulated at the 20th CPC National Congress, the 2023 amendment to the *Legislation Law* broadened the connotation of legislation in Article 55 to encompass "various forms such as enacting, amending, repealing, interpreting laws, and codifying legal codes." Accordingly, the democratic principle of legislation does not merely pertain to lawmaking in the narrow sense; related legislative acts in the broader sense — including amendment, repeal, interpretation, and codification — should likewise be guided by the human rights principle. Among them, amendment, repeal, and codification all constitute formative processes of normative texts and can, to a considerable extent, directly apply the requirements of the human rights principle under the *Legislation Law'*s provisions on "enactment." What requires separate analysis here is the issue of "interpretation."

The six provisions of Section 4, Chapter II of the *Legislation Law* were substantially finalized in the 2000 version, remained unchanged in 2015, and added only three minor supplements in 2023, none of which directly address human rights. Nonetheless, "among the possible interpretations of a statute, we must choose the one that renders it most reasonable and beneficial and produces the most favorable results."[49] Specifically, in the implementation context of the human rights principle, "the exercise of the 'power of interpretation' relies on literal interpretation and also on the articulation of human rights values and the application of systemic interpretation"[50]. The foundation of legal interpretation rests on roughly three grounds. First, theoretically, in Rolf Wank's view, legal interpretation matters to citizens because they are bound by law: every legal order is premised on citizens' obligation to comply with state law, and interpretation aims to ascertain "the will of the law," i.e., its "normative sense" (Gesetzessinn)[51]. The status of legal interpretation as a constitutive element of the legal order, along with citizens' binding obligation of compliance, means that both the human rights protection effect and the risk of rights infringement inherent in the construction of general legal rules extend into the interpretive stage, making the full application of the human rights principle of legislation beyond question. Second, in terms of nature, "legal interpretation is part of the law itself"[52], meaning that "when new circumstances arise after the enactment of a

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[49] François Gény et al., *Science of Legal Method*, Lei Lei et al. trans. (Beijing: The Commercial Press, 2022), 239.

[50] Chen Jinzhao, '"Respecting and Protecting Human Rights' in the Exercise of 'Legal Interpretation Power'," *Political Science and Law*1 (2019): 68.

[51] Rolf Wank, *Die Auslegung von Gesetzen (6th edition)*, trans. Jiang Yi and Ji Hongming (Beijing: Peking University Press, 2020), 50 and 55.

[52] National Law Office of the Legislative Affairs Commission of the NPC Standing Committee ed., *Annotations to the Legislation Law of the People's Republic of China* (Beijing: Law Press • China, 2015), 158.

law, if they are consistent with the guiding principles of the original provisions and fall within their scope, legal interpretation may be used to clarify the basis for their application, thereby reducing the need for amendments and preserving legal stability."[53] It is thus evident that legal interpretation involves, to a considerable extent, the formative process of legal rules, and legislative principles naturally apply accordingly. Third, normatively, on the one hand, the NPC Standing Committee has long promulgated legal interpretations without issuing formal announcements; Article 46 of the 2000 *Legislation Law* (now Article 52) expressly requires that legal interpretations be published by announcement, rendering the procedure more formal and complete,[54] principally manifesting a democratic sharing and dissemination of legislative information. On the other hand, although the current Article 50 does not specify in detail how the working body of the Standing Committee drafts interpretation proposals, extensively soliciting opinions from other working bodies of the Standing Committee, law-enforcement departments, experts and scholars, and relevant citizens, legal persons, and other organizations is inherent in the process,[55] "so that legal interpretation, while faithfully expressing the original legislative intent, seeks broader social consensus and adapts to the needs of social development."[56]

In summary, the clauses of the *Legislation Law* that concretely embody the human rights protection principle are formally concentrated on procedural democracy, reflecting to some extent the logical basis of Article 6 in subordinating the human rights principle to the democratic principle. Meanwhile, the human rights orientation evident in the legislative purpose and substantive rights provisions makes clear that the current legislative system's implementation of the human rights principle extends well beyond the sole path of procedural compliance — providing a concrete and direct normative foundation for the reflection offered above.

C. Substantive implementation of the human rights principle in central legislation

The *Legislation Law*'s embodiment of the human rights principle is relatively concentrated in democratic procedure clauses, which are largely determined by the inherent nature of the legislative system itself as "the process by which the Party's propositions and the people's will are transformed into the will of the State through statutory procedures."[57] Zhang Youyu has stated that: "Socialist democracy does not

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[53] Ibid., 154.

[54] Ibid., 158.

[55] Qiao Xiaoyang, *Guide to and Annotations on the Legislation Law of the People's Republic of China* (Beijing: China Democracy and Legal System Publishing House, 2015), 187.

[56] Feng Yujun, *Detailed Commentary and Application Guide to the New Legislation Law (2nd edition)* (Beijing: Law Press • China, 2024), 129.

[57] Wang Chen, "Explanation on the Draft Amendment to the Legislation Law of the People's Republic of China — Delivered at the First Session of the 14th National People's Congress on March 5, 2023," published on the NPC

merely mean that the people enjoy freedom of speech; more importantly, it means creating conditions through various effective means to enable the people to truly participate in the management of state affairs"[58]. Although the *Legislation Law* must address the fundamental institutional issue of the allocation of legislative authority, the specific regulation of legislative procedures inevitably occupies the majority of its content by volume. The primary human rights protection value manifested in legislative procedures — namely, the right to participation — is further translated at the normative level into the process of democratic participation in legislation. Of course, one cannot simply overlook the value of substantive legislative provisions and mechanisms in implementing the human rights principle merely because democratic procedure provisions constitute the majority in the concrete implementation of the human rights principle. This substantive implementation of the human rights principle is primarily reflected in the specific human rights protection content contained in the various laws enacted in accordance with the *Legislation Law*, for "legislative content is of a popular nature, aiming to protect the interests of the people, and paying attention to confirming and protecting their rights,"[59] and the laws produced by legislative bodies constitute the foundation for individual rights claims.[60] Article 2(1) of the *International Covenant on Economic, Social and Cultural Rights* provides: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." The emphasis on "legislative measures" herein is also primarily grounded in the perspective of the human rights protection within legislation. In summary, the *Legislation Law*'s elaboration on the human rights principle is focused on the category of democratic procedure, a result of the indirect logic whereby substantive human rights rules are diffused into the legislative products that follow the human rights principle — namely, individual laws. In this sense, the human rights protection clauses in specific laws serve as important vantage points for observing the concrete implementation of the human rights principle of legislation in the *Legislation Law*.

China adopts a decentralized model for human rights legislation[61]. In 2019, the

website, March 6, 2023, accessed March 21, 2025, http://www.npc.gov.cn/c1773/c1848/c21114/lffxz/lffxz007/202303/t20230306_423962.html.

[58] Zhang Youyu, "Legislative Principles of China's Socialist Legal System," *Dongyue Tribune* 1 (1980): 7.

[59] Zhou Wangsheng, "On the Legalization and Institutionalization of the Principles of Chinese Legislation," *Legal Forum* 3 (2003): 35.

[60] Yan Hailiang, "The Principle of Human Rights: Meaning, Limitations, and Realization — An Interpretation of the Clause 'The State Respects and Protects Human Rights'," *Jin Ling Law Review* Spring (2009): 70.

[61] Liu Zhigang, "The Constitutional Analysis of Human Rights Legislative Protection," *Human Rights* 3 (2015): 20

Legislative Affairs Commission of the NPC Standing Committee issued a dedicated summary entitled "Legislative Achievements in Human Rights Protection over the 40 Years of Reform and Opening-Up," which divides the timeline into two specific phases. The first phase, spanning from the launch of reform and opening-up to the 18th CPC National Congress, systematically reviewed legislative achievements in human rights protection across such domains as citizens' political rights, property and personal relations, fair and orderly competition among market entities, education, culture, science and technology, public health, labor relations, social security, social welfare and protection of the interests of special groups, the ecological environment, and the resolution of social disputes. Special emphasis was placed on the two public law dimensions most closely linked to human rights protection: the establishment of legal norms governing the exercise of administrative power, and the development of criminal law norms.[62] The second phase, from the 18th CPC National Congress onward, has seen the rights to subsistence and development, economic, social and cultural rights, and human rights of specific groups such as women, minors, the elderly, and persons with disabilities become the primary focus of legal protection, while special attention has also been given to two key institutional types: the fundamental system for ensuring the people's role as masters of the country, and the system for improving judicial protection of human rights.[63] It is thus evident that the human rights principle of legislation is manifested through democratic procedures in the legislative process, and more directly and concentratedly through the human rights protection clauses contained in the specific laws enacted under the guidance of that principle.

As of March 2025, approximately 20 currently effective laws directly stipulate provisions on the human rights principle, which can be classified into three types. First, detailed elaborations of the human rights principle, typified by Article 22 of the 2023 *Law on Foreign Relations*. At the macro level, this provision echoes the guiding tenets outlined in the Preamble of the Constitution — realizing the great rejuvenation of the Chinese nation, promoting world peace and development, and building a community with a shared future for mankind. In the middle view, it reflects a responsive interpretation of the international human rights discourse environment. This constitutes a relatively rare comprehensive elaboration of the human rights principle at the level of specific institutions. Second, given that the human rights legislative principle is more directly manifested in public law relations,[64] relevant

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[62] Research Office of the Legislative Affairs Commission of the NPC Standing Committee, ed., *Four Decades' Legislative Achievements since China's Reform and Opening-Up* (Beijing: Law Press • China, 2019), 101-108.

[63] Ibid., 108-116.

[64] Some scholars have even proposed "the integration of public law under the Constitution" on this basis; see

human rights clauses generally follow the logic of the horizontal allocation of state organ powers. Examples include Article 7 of the 2024 amended *Law on Supervision by the Standing Committees of the People's Congresses at All Levels* (concerning organs of power), Article 6 of the 2025 *Law on on Public Security Administration Punishments* (concerning administrative organs),[65] Article 6 of the 2018 *Organic Law of the People's Procuratorates* and Article 6 of the 2018 *Organic Law of the People's Courts* (concerning judicial organs), as well as Article 2 of the 2018 amended *Criminal Procedure Law* (involving multiple types of state organs). Third, thematic legislation targeting specific categories of human rights, such as the rights of persons with disabilities under the 2018 amended *Law on Protection of Disabled Persons,* the rights of the elderly under the 2018 amended *Law on Protection of the Rights and Interests of the Elderly*, the rights of women under the 2022 *Law on the Protection of Rights and Interests of Women*, and the rights of minors under the 2024 amended *Law on Protection of Minors*. In theory, among the aforementioned legislation, "the *Criminal Procedure Law* is more characteristically a human rights law. If the Criminal Law is the Magna Carta for offenders, then the Criminal Procedure Law is the Magna Carta for criminal suspects and defendants."[66] In practice, however, the invocation of the human rights principle in litigation is far more concentrated in civil proceedings. Research shows that among 360 valid judicial decisions citing the human rights principle as of the end of January 2025, civil cases accounted for 81.67%, covering diverse types of disputes including real rights, obligatory rights, tort liability, non-litigation procedures, and special litigation procedures (primarily opposition to execution, opposition to execution distribution plans, and contract dispute enforcement review), labor or personnel disputes, and personality rights, while administrative, criminal, and state compensation cases accounted for 15.83%, 0.56%, and 1.94%, respectively.[67]

The foregoing account of the human rights principle in existing laws yields three preliminary observations. First, in terms of quantity, since the constitutional enshrinement of human rights in 2004,[68] the distribution of the human rights principle

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Chen Ruihua, *The Thinking Mode of Legal Professionals* (Beijing: Law Press • China, 2007), 258.

[65] Upon its entry into force in 2006, this law first established the human rights principle at the statutory level through this article (then Article 5).

[66] Chen Ruihua, *The Thinking Mode of Legal Professionals* (Beijing: Law Press • China, 2007), 259.

[67] Liu Hongchun and Sun Yingxue, "On the Application of the Principle of 'The State Respects and Protects Human Rights' in Judicial Adjudication," *Chinese Journal of Human Rights* 1 (2025): 5-6.

[68] In fact, the *Recommendations of the Central Committee of the Communist Party of China (CPC) for Formulating the 15th Five-Year Plan for National Economic and Social Development* already put forward the human rights principle prior to the 2004 constitutional amendment; and the first normative document directly implementing the human rights principle after its formal constitutional entrenchment in 2004 was the *Notice of the Supreme People's Procuratorate on Strengthening the Examination and Prosecution of Cases Involving Crimes of Infringement upon Human Rights Committed by State Organ Functionaries Abusing Their Powers* (July 2004).

at the statutory level has taken initial shape: 96.7% of laws containing human rights clauses were enacted or amended since the 18th CPC National Congress, and four of the five laws that newly incorporated clauses about the human rights principle did so through amendments adopted after 2018. In summary, the imprint of the current era is prominent. Second, in terms of content, the laws that expressly stipulate the human rights principle almost invariably fall within the category of public law, and the vast majority of these laws confine themselves to generic, principle-level references to human rights in their general provisions — both features reflect the distinctive emphasis of China's human rights legislation at a particular historical phase. Third, in terms of attributes, although a considerable number of the specific rules elaborating upon the human rights principle are set out in procedural legislation, the path to human rights protection through these laws nonetheless operates by constructing procedural rules to achieve substantive human rights objectives. This does not undermine the internal complementary logic implicit in the dual relationship, whereby, on the premise that the *Legislation Law* emphasizes procedural protection for human rights in legislation, the laws and other central-level legislation emphasize the substantive character of human rights protection formed through the legislative process.

D. Procedural alignment of local legislation with the human rights principle in legislation

In contrast to the practice at the national and central legislative levels, where the human rights principle in legislation is implemented primarily through substantive rules, existing local legislation appears to follow the *Legislation Law*'s procedural orientation more directly, focusing on implementing the human rights principle from the procedural perspective of legislative process regulation. This can be examined in four aspects.

First, provincial-level local regulations. According to the author's search on PKULaw.com, Article 3 of the *Regulations on Border Defense and Public Security Management of Coastal Vessels in Hebei Province* (2012) expressly established "respecting and protecting human rights" as a basic principle for border defense and public security management of coastal vessels, setting a precedent for the inclusion of human rights clauses in provincial legislation. Notably, from that time until March 2025, provincial-level local legislation shifted entirely towards the domain of legislative procedure in its treatment of the human rights principle. The addition of clauses about the human rights principle in eight local legislative regulations in 2023 and twelve in 2024 bears a clear logical connection to the 2023 amendment to Article 6(1) of the *Legislation Law* — a connection reflected in the chronological sequence of the clauses' emergence, and more fundamentally in the emphasis on the human rights

principle as a regulator of legislative procedure.

Second, local regulations of cities are divided into districts.[69] Slightly different from provincial-level local regulations, the incorporation of the human rights principle in local regulations of cities divided into districts constitutes a wholly responsive adjustment to the 2023 amendment to the *Legislation Law*, and is therefore confined entirely to the procedural dimension of legislation. The earliest example dates back to Article 6 of the *Regulations on Changzhi's Municipal Local Legislation* as amended in 2023. The year 2024 saw a full-scale "surge" in the procedural incorporation of the human rights principle into local legislation at this level: the author's search on PKULaw.com reveals that a total of 69 cities and autonomous prefectures added clauses about the human rights principle when amending their local legislative procedural regulations.

Third, local government rules. Local governments that have incorporated the human rights principle into their rules are currently concentrated at the level of cities divided into districts, including two cities (Qingyuan, Yuxi) and one autonomous prefecture (Qiandongnan). In all three cases, the human rights-related provisions are structurally located in the section on general principles. Pursuant to Article 94 of the *Legislation Law*, the procedures for local government rules are comprehensively and directly regulated by the *Regulations on Procedures for the Formulation of Rules*. Although the Regulations themselves do not expressly stipulate the human rights principle, Article 3(2), Article 5(1), Article 16, and Article 23(2) are in fact specific procedural rules for administrative rule-making designed on the basis of the human rights protection concept. The explicit affirmation of the human rights principle in the newly amended local rule-making procedures of these two cities and one autonomous prefecture undoubtedly forms a dual logic of close continuity and further specification with the dispersed provisions of the *Regulations on Procedures for the Formulation of Rules*.

Fourth, autonomy regulations. Currently, the autonomy regulations of two autonomous prefectures and three autonomous counties expressly stipulate that "the organs of self-government shall respect and protect human rights." From the normative perspective, Article 115 of the *Constitution* provides that the comprehensive requirements imposed on organs of self-government span the full range of their exercise of both local state organ powers and autonomy powers. This covers the implementation of the human rights principle by these special local state organs in the course of participating in and handling substantive legal relationships,

[69] The term "cities divided into districts" includes cities with districts, autonomous prefectures, and cities with special economic zones, among others. See Zheng Yi, *Reform and Implementation of Local Legislative Power in Cities Divided into Districts* (Beijing: Law Press • China, 2020), 10.

and also the observance of the human rights principle by the people's congresses and governments of autonomous prefectures in the exercise of local legislative powers. It is thus evident that, unlike the preceding three categories of general local legislation, the limited human rights principle clauses in existing autonomy regulations are better positioned to balance human rights legislative protection in both the substantive and procedural dimensions.

In summary, the principle of "respecting and protecting human rights" in local legislation falls into two categories. First, the human rights principle in legislative procedural norms was uniformly supplemented after the second amendment to the *Legislation Law* in 2023, and is invariably placed within the clause on "upholding and developing whole-process people's democracy."[70] Second, the human rights principle in non-procedural legislative norms is not directly linked to democratic issues, and thus clearly carries a broader connotation of human rights. Although it does not yet fully encompass the general category of human rights in its entirety, it at least accommodates both the substantive and procedural dimensions.[71] Some even transcend the substantive-procedural binary structure, emphasizing the foundational character of the human rights principle in a more macro sense.[72] Of these two types, the former is a direct result of the influence of the *Legislation Law*, whereas the latter demonstrates that the normative effect of the principle of "respecting and protecting human rights" is not necessarily confined to the institutional framework of democracy.

V. Concluding Remarks: Towards the Purposification and Regularization of the Human Rights Legislative Principle

The preceding discussion has examined the normative trajectory and full

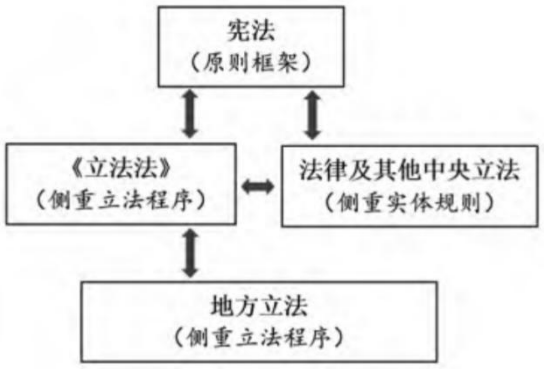
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[70] In the vast majority of cases, "upholding and developing whole-process people's democracy" and "respecting and protecting human rights" are stated consecutively. In the rare instances where other content is inserted between them, it still concerns procedural issues of democracy and remains within the same clause — for instance, Article 3(4) of the *Liupanshui Municipal Local Legislation Regulation*: "We should uphold and develop whole-process people's democracy, reflect the will of the people, ensure the people's participation in legislative activities through multiple channels, respect and protect human rights, and safeguard and promote social fairness and justice."

[71] For instance, Article 3 of the *Regulations on Border Defense and Public Security Management of Coastal Vessels in Hebei Province* — the earliest local regulation to incorporate the democratic principle — provides: "We should uphold openness, fairness, and impartiality, respect and protect human rights, and protect citizens' personal dignity." The opening segment emphasizes procedural values, the closing segment substantive values — giving "respect and protect human rights," positioned in between, a dual-dimensional character. Similar examples include Article 3 of the *Shaanxi Provincial Regulations on Counter-Espionage Security Prevention* and Article 3 of the *Chongqing Municipal Legislature Acts to Support National Anti-Espionage Law*.

[72] For instance, Article 2 of the *Guangdong Provincial Legal Aid Regulation* provides: "Legal aid work shall uphold the leadership of the Communist Party of China, adhere to a people-centered approach, respect and protect human rights, follow the principles of openness, fairness, and impartiality, and combine state guarantees with social participation."

connotation of the principle of "respecting and protecting human rights" as newly specified in the 2023 amendment to the *Legislation Law*. In particular, it has clarified a series of misreadings arising from the direct inclusion of this expression in Article 6 on the principle of democratic legislation, and has preliminarily outlined the basic features of the institutional development of the human rights legislative principle in current central and local legislation (see Figure 1).



宪法 （原则框架）	Constitution (Principles & Framework)
《立法法》 （侧重立法程序）	Legislation Law (Legislative Procedure)
法律及其他中央立法 （侧重实体规则）	Laws & Other Central Legislation (Substantive Rules)
地方立法 （侧重立法程序）	Local Legislation (Legislative Procedure)

Figure 1: Institutional Development of the Human Rights Legislative Principle in Current Central and Local Legislation

The aforementioned normative structure reveals that although the human rights legislative principle has not entered the text of the *Legislation Law* until recently, its standardized implementation within the current legislative framework has already acquired a certain foundation — attributable to the spirit of modern rule-of-law inherent in the principle itself and the scale effects of the comprehensive deepening of socialist rule of law with Chinese characteristics in the new era. Among these, the normative arrangement in Article 33 of the *Constitution*, which explicitly designates "the state" as the subject of "respecting and protecting human rights," indicates that the implementation of the human rights principle in the legislative domain must give equal consideration to both legislative procedural regulation and legislative rule design. At the level of law, which plays the core role, although the institutional

substance of these two aspects is divided between the *Legislation Law* and other central legislation, the logical structure is at least relatively complete. The key issue at present lies in the risk of a "cheese effect" — that is, institutional flaws or risks spreading downward level by level and being continuously amplified through isomorphic "holes."[73] In other words, the current emphasis of the *Legislation Law* on legislative procedures has led to wholesale replication by local legislative procedural provisions that take it as their direct basis. This, in turn, has prevented local legislation from fulfilling its due function in designing concrete human rights protection rules, while highlighting the difficulty in fully implementing substantive human rights norms in laws and other central legislation. As a result, the structural division of labor among central legislation in pursuit of the rule-of-law goal of human rights protection has, on its face, degenerated into a structural contradiction. Accordingly, future efforts to refine the human rights legislative principle should focus on two key issues.

First, reconsider the logical positioning and structural arrangement of the human rights principle in the General Provisions of the *Legislation Law*. On the one hand, the essence of legislation lies in protecting human rights through the rational allocation of social resources,[74] and thus human rights legislation in a broad sense should cover all types of human rights on the basis of domestic practice, rather than being confined to the right to participate in public affairs among civil and political rights.[75] On the other hand, based on the foregoing analysis, the human rights principle is closely interrelated with the three prevailing principles in the current *Legislation Law*, namely scientific legislation, democratic legislation, and legislation according to law. Since the primary binding force of the human rights provisions in the *Constitution* on legislative organs is primarily manifested as an obligation to legislate for human rights,[76] the three principles of scientific, democratic, and law-based legislation may in fact be understood as specific pathways for realizing the human rights principle. Since "among the values of legislative principles, it is human rights that yield the greatest practical result,"[77] the human rights legislative principle clearly occupies a higher rank within the entire system of legislative principles. It should not be confined

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[73] Luo Haocai and Song Gongde, *Soft Law Is Also Law: Public Governance Calls for Governance by Soft Law* (Beijing: Law Press • China, 2009), 383.

[74] Qin Qiang, "Research on the Legislative Organ's Obligation to Legislate for Human Rights — Against the Background of the Constitutional Enshrinement of Human Rights Provisions," *Northern Legal Science* 5 (2012): 47.

[75] Bai Guimei, *Human Rights Jurisprudence* (Beijing: Peking University Press, 2011), 134-139.

[76] Qin Qiang, "Research on the Legislative Organ's Obligation to Legislate for Human Rights — Against the Background of the Constitutional Enshrinement of Human Rights Provisions," *Northern Legal Science* 5 (2012): 47.

[77] Li Jianhua and Xu Gang, "An Ethical Interpretation of Legislative Principles," *Hebei Law Science* 6 (2005): 9.

to the narrow context of democratic legislation, but rather should be incorporated into Article 1 of the *Legislation Law* as an important purpose and objective of the entire legislative system, so as to maximize the function of the human rights principle in "reflecting the evaluative unity of law."[78] Regarding this "higher-level arrangement" of the human rights principle, this article does not seek to engage in the macro-level judgment or abstract debate over which of the two principles — democracy or human rights — takes precedence. Instead, the argument remains anchored in the normative level for concrete analysis, the key being Article 33(3) of the *Constitution*: on the one hand, the practice of the state in respecting and protecting human rights inevitably requires that state organs must respect and protect human rights when exercising all kinds of powers, and legislative power is naturally covered by this requirement; on the other hand, the structural arrangement in the *Constitution* whereby the content on fundamental rights and obligations precedes that on state organs,[79] and Article 33 is structurally positioned as the first article in the chapter on "Fundamental Rights and Obligations of Citizens,"[80] provide a normative foundation for the priority of legislative power in realizing the state's purpose of "respecting and protecting human rights." Of course, given the phased nature of the human rights principle's entry into the *Legislation Law* and factors such as the timing of legislative amendments, the foregoing recommendations may be comprehensively assessed and carefully decided upon when the *Legislation Law* undergoes its third round of amendment, taking all relevant factors into account.

Second, given that current local legislation is excessively oriented towards the procedural regulation of the human rights principle, resulting in a severe deficiency in the design of substantive human rights protection rules — and even further highlighting the structural imbalance in the central legislative framework. Then, now that the procedural regulation of the human rights principle has been preliminarily achieved, local legislation should shift its focus towards rule-building for concrete human rights protection mechanisms in the implementation of the human rights principle over the coming period. This includes further enriching and specifying human rights protection mechanisms, and also explicitly incorporating the human rights principle in general provisions on legislative purposes, values, and concepts.

On the basis of the foregoing, the ideal institutional framework for the human

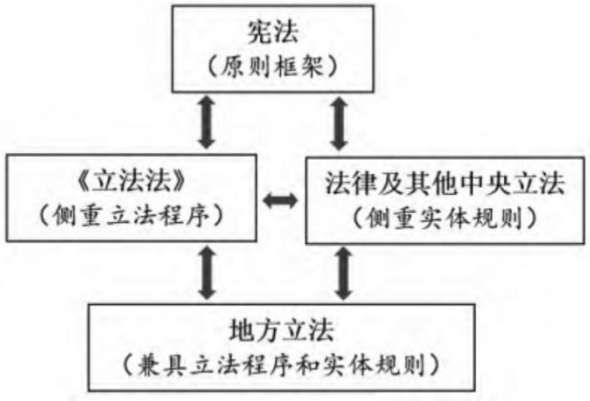
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[78] Claus-Wilhelm Canaris, *Systemdenken und Systembegriff in der Jurisprudenz: entwickelt am Beispiel des deutschen Privatrechts (System Thinking and System Concepts in Law: The Case of German Private Law)* (2nd edition), Chen Dachuang trans. (Beijing: Peking University Press, 2024), 48.

[79] Cai Dingjian, *A Concise Explanation of the Constitution* (2nd edition) (Beijing: Law Press • China, 2006), 88.

[80] Wang Zhaoguo, "Explanation of the Draft Amendment to the Constitution of the People's Republic of China — Delivered at the Second Session of the 10th National People's Congress on March 8, 2004," National People's Congress website, March 15, 2004, accessed October 26, 2025, http://www.npc.gov.cn/npc/c2/c183/c1481/201905/t20190523_3504.html.

rights legislative principle is illustrated in Figure 2:



宪法 （原则框架）	Constitution (Principles & Framework)
《立法法》 （侧重立法程序）	Legislation Law (Legislative Procedure)
法律及其他中央立法 （侧重实体规则）	Laws & Other Central Legislation (Substantive Rules)
地方立法 （兼具立法程序和实体规则）	Local Legislation (Legislative Procedure & Substantive Rules)

Figure 2: Institutional Development of the Human Rights Legislative Principle in Central and Local Legislation under Ideal Conditions

This normative structure, on the one hand, directly enriches the substantive rules on human rights protection in local legislation, thereby correcting the structural imbalance identified above by way of shoring up weaknesses; on the other hand, it frees the structural division of labor inherent in central legislation's implementation of the human rights principle from unwarranted questioning and challenge, enabling a more balanced and effective exercise of scientific guidance in the continuous deepening and refinement of the human rights rule-of-law system in the new era, and achieving a deeper integration, interaction, and synergy among the three principles of scientific legislation, democratic legislation, and legislation in accordance with law.

(Translated by *LI Chunyan*)