

近代憲法社會權的肇始： 以威瑪制憲檔案為中心*

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本文將威瑪憲法之社會權的近代肇始，視為一場關於自身法律傳統的文化轉譯，以應對社會（主義）革命之時代風潮。通過利用威瑪國民大會的制憲檔案，本文試圖清晰呈現威瑪憲法的制定者對於社會權的創制，經過了重新闡釋權利的定義方式，重新考察權利的編纂史，以及重新構造權利法典化的統一邏輯等三個步驟，從而改造了基本權利的典範以吸納新的時代精神，奠定了一種個人通過共同體而融入國家的嶄新邏輯，並影響了威瑪憲法的篇章體例。正在這個意義上，憲法社會權的近代肇始，不僅是威瑪憲法之內在邏輯的關鍵環節，而且成為了一戰後諸多新興國家最關鍵的立憲參照，以重構各自國家與國民之根本關係。

關鍵詞：威瑪憲法、文化轉譯、社會權、基本權利

* 本文係國家社會科學基金重大項目「中國憲法學文獻整理與研究」（項目編號：17ZDA125）階段性成果。

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Inventing Social Rights: The Constitutional Archives of the Weimar National Assembly

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In the face of the dramatic changes in the *Zeitgeist*, the modern origin of the social rights of the Weimar Constitution could be considered as a cultural translation of its own legal tradition in response to the social(ist) revolution. By using the constitutional archives of the Weimar National Assembly, I attempt to present a clear picture of the drafting process of social rights by the founders of the Weimar constitution, through a three-step process of reinterpreting the way of defining rights, revisiting the historiography of rights, and reconstructing the system of fundamental rights by a uniform logic, so as to transform the classic paradigm of fundamental rights to incorporate the new *Zeitgeist*. In this sense, the creation of social rights was not only a key element in shaping the internal logic of the Weimar Constitution, but also became the most crucial constitutional reference for many of the new countries emerging after the First World War to reconstruct their fundamental relationship with their citizens.

Keywords: Weimar Constitution, cultural translation, social rights, fundamental rights

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