An Analysis of the Principles in Formulation and Implementation of University Constitution from the Perspective of the Spirit of Law

Yang Xin¹, Hu Weina², Li Ziyue¹, Deng Yan^{1,3}

¹Youjiang Medical University For Nationalities.

²Guangxi University Of Finance Economics.

³Correspondence author.

Abstract: Under the background of university constitution construction, the formulation and implementation of the university constitution need to be divided into three parts, the legal effect, the regulatory mechanism, the power inside and outside of the university and the legal relationship, these three areas need further improvement. This paper will analyze the principles of university constitution from three aspects: constitution formulation, rights and interests protection and procedure implementation conditions.

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***Corresponding author:** Deng Yan, 1246946636@qq.com

From the perspective of the spirit of law, the core and most essential requirement of the rule of law in the field of higher education is to promote the modernization of university governance by ideas and means of the rule of law, and the key is to establish a system with the university constitution as the guiding principle. That is to say, governing the university according to law and running the school according to the constitution will become one of the new normal of running the university, and adhering to the principle of legality, rights and interests protection

and university autonomy are important prerequisites for the formulation and implementation of the university constitution.

At present, universities of China are in the historical period of changing from static regulation to dynamic regulation^[1], but the implementation of university regulation can be further improved in the following aspects.

The principles and requirements in the process of making and implementing university constitution. We can find that the main reason for the difficulty in the implementation of university constitutions is that the formulation of the regulations has not yet met the needs of independent management of universities after observing the historical experience of the construction of university constitutions in China^[2]. It has already 70 years after we established the university of new era since 1949, the leadership system of universities in China has completed the transformation of the "Principal Responsibility System" to "The principal responsibility system under the leadership of the party committee" which is stipulated by the "Higher Education Law of the People's Republic of China", every university has accumulated rich university management experience, and has formed a relatively stable operation system during this period of time; under such a premise, colleges and universities can jump out of the original operation and management mode, to transform the university constitution into the dominant governance system still needs

to get more detailed legal provisions and a more reasonable transition mode.^[3]

Firstly, the principle of legality. From the perspective of legal system, the principle of legality is the important premise of the university governance concept and governance institution. It is the basic criterion for institutions of higher education to run schools independently according to law, management implementation and public functions performance^{[4][5]}. Institutions of higher education determined the constitution of university should include: name of the school, location, scale, the basic information such as the principle and the set of disciplines, the form of education, the internal management system, the collaborators and the rights and obligations between the school core content according to the Education Law of the People's Republic of China.

Secondly, the equity principle. The construction of the legal framework provides a legal guarantee for university constitution to regulate and standardize the rights and obligations of the stakeholders within the university. The rights and interests of teachers and students and their guarantee mechanism should be further defined in the process of the practical refinement of the constitution. The principle of rights and interests protection refers to that the university constitution stipulates the rights and interests of different stakeholders in the university, and the formulation process should always adhere to the extensive participation of all stakeholders, and to the mass, and fully mobilize the participation of teachers and students. We should mobilize the enthusiasm and initiative of teachers, students and staffs to participate in the formulation of the constitution in various ways, extensively listen to the opinions and suggestions of the higher authorities, the internal organization of the school, the masses of teachers and students, and fully reflect the requirements and wishes of the school organizers, administrators, scholars, faculties and students.

Thirdly, the principle of autonomy. The primary

purpose of the university constitution is to establish a modern university system and guarantee the autonomy of universities. The principle of university autonomy means that self-sponsored learning according to law is the essence of the modern university system. The university constitution establishes the scope of university autonomy by reasonably dividing government authority and scientifically defining government management responsibilities, and guarantees the autonomy of the school to the government. Organized by the government, the school runs schools, the school manages the internal affairs and carries out teaching activities independently on the premise of abiding by the constitution and laws of the country. It implements internal governance model by leadership of party committee, principals, professors scholarship and democratic management.

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