

国家社会科学基金「八五」重点课题

LEGISLATION 当代中国 IN NEW 立法 CHINA

总主编 郭道晖



上

中国民主法制出版社

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[附录] 当代中国法律、行政法规一览表(1949~
1998.4)

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序 言

中国共产党第十五次全国代表大会确立了“依法治国，建设社会主义法治国家”的治国方略和建国目标。其中提出要“加强立法工作，提高立法质量，到2010年形成有中国特色社会主义法律体系。”“要把改革和发展的重大决策同立法结合起来。”这是今后我国立法工作的重大任务，也是推进立法工作的重要契机。

立法是法治之本，立法权是体现人民主权的最高权力。一个法治国家是以民主宪政为基础，以宪法和法律为依据的。宪法和法律在国家与社会生活中具有至高无上的权威。“依法治国”不仅要求“有法可依”，要求有比较完备的法律体系；而且要看所依的或所立的是什么样的法，是良法还是劣法、恶法？社会主义的立法更要看它是否充分反映了人民的共同意志与利益，是否符合“三个有利于”原则，即有利于发展社会主义社会的生产力，有利于增强社会主义国家的综合国力，有利于提高人民的生活水平。这是衡量立法政治价值与社会效益的最终标准，也是决定是否称得上是“人民当家作主”的社会主义法治国家的基本要件。要达到这些，就有赖于立法决策与立法制度的民主性，立法指导思想与立法方略的科学性；有赖于对立法发展的客观规律掌握的准确性和对这种发展规律与社会需要作出立法反应的及时性。而这些又有赖于立法者对国情的了解和对立法原理与立法技术的素养。

我国自 1979 年恢复和加强立法工作迄今近 20 年来,在立法数量上取得了巨大成就。截至 1997 年,全国人大及其常委会已制定了 328 个法律和法律性的决定,国务院制定了 750 多个行政法规,地方人大制定和批准了 5300 多个地方性法规。中央和地方政府制定的行政规章则达 28000 多个。在立法体制、程序上已建立了一些基本制度。在法律的立、改、废等工作中也积累了一些宝贵的经验,全国初步形成了一个庞大的立法工作队伍。一些大学法律院系也开出了立法学课程,或建立了立法研究机构。立法学著作也陆续出版了二三十种。这些都为今后立法工作的进一步发展打下了初步基础。

当然,从适应社会主义经济建设、民主政治建设和精神文明建设的需要及市场经济发展的要求上看,从实现在 2010 年形成有中国特色的社会主义法律体系的目标要求上看,当前的立法工作与立法学研究还有较大差距,需要大力加强与改善。

为此,1992 年全国哲学社会科学规划领导小组确定将“当代中国立法研究”列为国家社科基金资助的“八五”计划重点课题之一。本课题组承担这项研究任务,组织全国人大常委会法工委和国务院法制局及法学界近 20 位专家、学者,历时 6 年,在搜集大量资料和认真研究、总结的基础上,撰写了这部长达 120 万字的立法巨著。我们愿将它作为适应国家进一步加强立法工作的需要,实现“依法治国,建设社会主义法治国家”的伟大目标而提供的一份奉献。

本书共分 4 卷。第一卷为“当代中国立法原理”,第二卷为“当代中国立法的发展”,第三卷为“当代中国立法体制”,第四卷为“当代中国立法技术”。

在当代中国立法原理卷中着重探讨了中国立法的理论基础与指导思想、立法的基本原则、立法的目的与价值、立法意识与决策、立法体系、立法发展规律、立法效力、效率与效益、立法的局限性与界限、立法学研究等，其中不少是我国立法学界未曾或较少涉足的理论领域，结合中国立法实践，进行较深层次的立法哲理思考，有助于立法者与立法学者开拓视野，增强理论素养。

在当代中国立法发展卷中，着重阐述当代中国立法的发展过程与阶段，主要成就与经验，发展的趋势与展望，并就宪政立法、刑事立法、民事立法、经济立法、行政立法、社会立法等领域的立法概况和重要法律的立法背景、过程、问题、经验、发展趋势，作较详细的评介，其内容出自立法机关和作者亲自参与立法的第一手资料与体验，不少是初次面世。

在当代中国立法体制卷中，着重评述中国立法体制现状及提出进一步完善的构想。包括立法权限的划分、立法机构体制、运行体制、监督体制、国家立法、政府立法、一般地方立法、民族自治地方立法、经济特区立法、特别行政区立法，中国立法与司法体制、与社会团体和公民、与中国共产党的关系等。这是对中国立法体制的现状与问题所作的较广泛全面的审视与评价，对进一步健全立法体制提出一些切实可行的对策建议。

在当代中国立法技术卷中，对中国立法的基本策略、方针、方法和立法工作过程的各个环节（立法的准备、预测、规划、起草、制定、修改与废止、立法解释、法的清理、整理、汇编、编纂等）的立法技术，以及法的内部构造、语言、技术的运用等，结合中外立法的经验与问题得失，作细密的探讨、阐释，为立法工作者进行立法操作上的规范化、科学化，提供理论与实用的参照。

全书还附有中国法律、行政法规一览表。

本课题完成于1997年春。书中论及的内容与资料也截至这一年。

本课题成书，可以说是我国第一部全面论述当代中国立法的基础性著作，具有较强的理论性、丰富的资料性和切实的对策性。

本书由郭道晖任总主编兼第一卷分主编，陈延庆、黄曙海、周旺生分任第二、三、四卷分主编。其他作者也大都是直接主持或参与中国立法工作的专家和立法学家。

本书由郭道晖、周旺生负责总体设计，各分卷主编负责主持该卷的编审、统稿，全书最后由郭道晖统改定稿。由于本书是由课题组成员分别撰写，其中有重复或者观点不尽一致的地方，虽作了一些统改，难免有所疏漏。由于本书于1997年定稿，所论述的立法情况截至1997年为止。1998年第九届全国人大第一次会议在立法上和机构改革上的一些新进展与新变化，我们在行文中或注释中作了个别增补，有不尽之处，请读者鉴察。

本书十分荣幸地得到八届全国人大常委会委员长乔石和副委员长王汉斌为本书题辞，这是对本书、也是对我国立法工作的重要指导。全国人大常委会法制工作委员会主任顾昂然、副主任乔晓阳担任本书总顾问，对本课题组给予了大力支持和指导。本课题组还得到全国人大常委会法工委副主任胡康生、张春生和法工委国家行政执法室副主任王世瑜以及法工委各室和国务院法制局的有关同志的支持。在此，我们谨一并致以衷心的感谢。

本书承全国人大常委会办公厅中国民主法制出版社的关注，在社长杨逢春、总编辑程湘清、副总编辑艾其来的大力支持下，作为该社重点图书出版，编辑部主任夏莉娜副编审出任本书责任编辑。

辑，仔细统阅了全书文稿，提出了许多宝贵意见。本课题组秘书、全国人大常委会法工委国家法行政法室的赵欣同志，为本书的完成做了许多协助工作。对他们的支持和辛劳，我们深以为谢。

本课题自 1992 年启动，至 1997 年完稿，历时 6 载。完稿后，未及广泛征询各方意见，不当之处在所难免。敬希法律界、法学界专家学者和广大读者批评指正。

郭道晖谨识

(1998 年春节于清华园)

Preface

The basic strategy of ruling the country and the target of "Governing the country according to law and making it a socialist country ruled by law" has been reaffirmed by the 15th Party Congress. The Party Congress also calls on "strengthening legislation, improving the quality of laws and forming a socialist legal country with characteristics by the year 2010" and "combining the important policies concerning reform and development with legislation". These are the great tasks of legislation in the future and also a significant chance of promoting legislation.

Legislation is the source of ruling by law. Legislative power is the top authority embodying the people's dominion. Legal country is based on the democratic constitution and laws. The constitution and laws have the highest authority in affairs of the state and the society. "Governing the country according to law" requires not only "there must be laws to go by", that means a relatively complete legal system is necessary, but also what kinds of laws, good laws or not good laws, or bad laws? The socialist legislation should reflect the common will and the interests of the people and comply with the principle of "three favorables", that is whether it is favorable to promoting the growth of the productive forces in a socialist society, increasing the overall strength of the socialist state and raising the people's living standards. That is a fundamental criterion to judge the

political value of legislation and the social results, and a basic requirement to see whether it is a socialist legal country of "people being the masters of the country". Achieving this aim depends on the democracy of the policy-making and the system of legislation, the scientification of the guiding ideology and strategy of legislation, the precision of mastering objective law of the development of legislation, and prompt reflection of legislation to the social demand. All this relies on the understanding of the domestic conditions, accomplishment of legislative principles and legislative techniques.

Great achievements have been made in China since the resumption and strengthening of legislation from 1979. Up to 1997, 328 laws and the decisions concerning the laws have been enacted by the National People's Congress and its Standing Committee. More than 750 administrative decrees have been formulated by the local people's congress. More than 28000 administrative regulations have been made by central and local governments. The basic systems concerning legislation and legislative procedure have been set up. Good experience has been accumulated in the course of legislation, revision and abolishment of laws. A great number of staff work on legislation. The subjects on legislative affairs have been given and some research institutions have been established in some universities. More than 20 books on legislation have been published. All this has laid down a primary foundation for the further development of legislation in future.

However the current legislative work has a big gap in research of legislation and should be further strengthened and

improved if we consider the matter of legislation from the point of meeting the demands of the socialist economic development, the construction of democratic politics, reform and opening — up and the development of market economy, and from the point of forming a socialist legal system with characteristics by the year 2010.

Therefore the leading group of the National Philosophy and Social Science Project decided to put the project " Research on Legislation in New China" as one of the priority projects during the " Eighth Five Year Plan" financially supported by the State Social Science Foundation. Our group undertook the task and organized near 20 experts and scholars, who are from Legislative Affairs Commission of the Standing Committee of the National People's Congress, Bureau of Legal System of the State Council and the legal circle. They finished this monumental work after spending six years in collecting enormous materials, making serious research and summing up. We are willing to provide this book as our devotion to the realization of the great aim " governing the country by laws and making it a socialist country ruled by law".

The book has four volumes. The first volume is " Principles of Legislation in new China". The second volume is " the development of legislation in new China". The third volume is " legislative system in new China" and the fourth volume is the " legislative techniques in new China".

The first volume mainly probes into the theoretical basis of legislation in China, the fundamental principles of legislation, the aims and the value of legislation, essence of legislation, policy—

making, legislative system, the objective law of legislative development, the effect, benefit and efficiency of legislation, limitations of legislation and the research of the legislation, and so on. Many of the topics have never been or seldom been explored by the legal circle in China. Our points of view in this volume demonstrate our thinking and will be helpful to legislators and scholars to open up the field of vision and to strengthen theoretical accomplishment.

The second volume expounds the process and stages of legislation in new China, the main achievements and experience, the trend and foresight of legislation, and give detailed introduction and comments to the background, process, controversial issues, experience and the trend of legislative development, constitutional legislation, criminal legislation, civil legislation, economic legislation, administrative legislation and social legislation. The writers are all from legislative organs and all the materials used in this volume and the experience are first-hand. A great deal of them is disclosed for the first time to the public.

The third volume approaches the current conditions of legislative system in China and puts forward the proposals for further improvement. It includes the division of legislative power, system of legislative body, enforcement system, supervision system, state legislation, government legislation, local legislation, legislation in autonomous region, legislation in economic special zone, legislation in special administrative region, legislation in China and judicial system, social group and social member, and the relationship with the Communist Party

of China, and so on. This is a comprehensive review and evaluation on the current conditions and the problems of legislative system of China and practical suggestion to the further improvement of the system of legislation.

The fourth volume probes into the legislative strategy, policy, method, techniques of the different stages in the process of legislation (the preparation, foresight, planning, drafting, enactment, revision and abolishment, legislative interpretation, sorting out, compilation, codification, the evaluation of legislation and the information feedback), internal structure of law, legal language and so forth, and gives a deep exploration and explanation to the above issues with the combination with the experience of legislation both in China and abroad for the purpose of providing legislators with theoretical and practical references.

This project completed in the spring of 1997. The materials and the contents in this book were also up to that time.

This book is the first basic work discussing the comprehensive issues of legislation in China. It has the characteristics of a strong theoretical level, rich information and practical countermeasures.

Mr. Guo Daohui is the general editor—in chief of this book and a chief editor of the first volume. Mr. Cheng Yanqin, Huang Shuhai and Zhou WangSheng are the chief editors of the second, third and fourth volumes respectively. Other writers are the experts who are in charge of, or participating in the legislation in China.

Mr Guo Daohui and Zhou Wangsheng took charge of the