

CHINESE
CONSTITUTION
(BILINGUAL)

● 原新利 主编

中国宪法

(双语)

华中科技大学出版社
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内 容 提 要

《中国宪法(双语)》立足于宪法学的基本理论,重点介绍了中国宪法的基本规范和制度,以及近十年来中国宪政制度和公民基本权利的发展。全书共设九章:第一章、第二章主要介绍宪法学的基本常识和宪法基本制度;第三章简要梳理中国宪法的历史发展;第四章、第五章立足我国宪法与宪法性法律,详细介绍中国的基本政治制度;第六章论述中国公民的基本权利和义务;第七章、第八章重点介绍中国国家机构的体系;第九章则以我国基层群众自治制度为落脚点。

Synopsis

Chinese Constitution (Bilingual), based on the basic theory of constitution, focuses on the basic norms and institutions of Chinese constitution, the development of Chinese constitutional politics system over the past decade, and the fundamental rights of citizens. The book consists of nine chapters. Chapter I and Chapter II introduce the basic common sense of constitution, and basic constitutional system; Chapter III briefly reviews the historical development of Chinese constitution; Chapter IV and Chapter V, based on the constitution and constitutional laws, introduce in detail the basic political system in China; Chapter VI discusses the fundamental rights and duties of citizens; Chapter VII and Chapter VIII focus on Chinese systems of the state structure; Chapter IX settles to the self-government system at the grass-roots level in China.

前 言

《中国宪法(双语)》是供大学本科法学专业核心课程“宪法学”在进行双语教学中使用的教学用书。

兰州理工大学法学专业从 1998 年设立至今经历了一个不断发展、积累的过程。为适应新世纪新阶段的新要求,特别是响应 2005 年开始在全国高等院校推行双语教学的倡导,我们在较长期的宪法学教学和科研积累的基础上,编写了这本新的宪法学双语教材——《中国宪法(双语)》,力求准确全面地涵盖宪法学特别是中国宪法学的基本知识。

本书作为本科生教材与其他宪法学教科书有很大不同。首先,本书采用最新的中国宪法学体系,并对宪法学的基础理论问题进行了全新的探讨,特别是社会主义制度与宪政制度的关系、人权与公民权利保障问题等。其次,本书避免了与传统宪法学教材的重复,以中英文对照的形式对宪法的基本核心问题特别是中国宪法中的重要问题进行了介绍和探讨,较好地整理了宪法学知识在中国语境中的表述方式和研究成果。再次,本书比较清晰地区分和界定了宪法学与其他法学学科以及政治学等学科之间的分工,通过对宪法事例和案例的引进与分析将宪法学从传统的政治学学科框架中剥离出来,体现出非常典型的法学学科的知识特点。最后,本书将宪法学理论研究的严肃性与宪法学教学的简便性有机结合。全书结构严谨,内容层次感强,前后章节和上下文之间观点统一、逻辑连贯、系统性较强,有助于启发读者深入思考宪法学的基础理论问题,同时也能为读者提供一些解决实践中存在的具体宪法问题的较为有效的学术思路和方案。

本书的中文部分全部由主编原新利完成,英文部分的翻译分工(按姓氏笔画顺序):朱景梅第七章、第八章、第九章;原新利第三章、第四章、第五章、第六章;曾妹云第一章、第二章。全书的统稿和中英文对照的校对工作由原新利完成。

本书根据新形势的需要力求在多个方面尝试更新,英文部分力求用词统一准确。由于各位译者在语言风格上不尽一致,因而难免存在诸多疏漏及不当之处,我们真诚欢迎并衷心感谢各位同行及同学批评雅正。

Foreword

For undergraduates majoring in law, *Chinese Constitution (Bilingual)* is a teaching book for bilingual teaching of the core curriculum—Constitutional Law.

Law major in Lanzhou University of Technology has experienced a process of continuous development and accumulation since it was established in 1998. In order to adapt to the new requirements of the new century and new stage, especially to respond the advocacy to start the bilingual teaching in education in 2005, we compile this new constitution bilingual book—*Chinese Constitution (Bilingual)* on the basis of long-term accumulations in constitution teaching and research, trying to accurately and comprehensively cover the basic knowledge of the constitutional law, especially the Chinese constitutional law.

As an undergraduate textbook, it is very different from other similar textbooks. Firstly, the book uses the latest constitutional law system of China, and it has a brand new discussion on the basic constitutional theory, particularly about the relationship between the socialist system and the constitutional politics system as well as the protection of human rights and citizenship, and so on. Secondly, the book introduces and discusses the basic core of the constitution especially the important problems in constitution of China in the form of contrast in both Chinese and English. In this way, it avoids the duplication of traditional constitutional law textbooks, and arranges formulations and researches of constitutional knowledge in the context of China. Thirdly, this book clearly distinguishes and defines the roles and the division of labour based on specialization between constitution and other law subjects as well as the political science. The constitutional law is spun off from the framework of the traditional political science discipline by introducing and analysing the constitution examples and cases, so it has the typical characteristics of the typical law subject knowledge. Finally, the seriousness of the constitutional theories and the simplicity of the constitution teaching are combined organically in this textbook. The whole book has several following features such as rigorous knowledge structure, strong sense of hierarchy, perspectives unified, logical coherence, and has a good knowledge of systematicness. It not only can help inspiring readers to think deeply about the problems of the basic theory of constitutional studies, but also can provide ideas and programs to effectively solve the specific constitutional issues in practice for readers.

Chinese portion of this book is all completed by Yuan Xinli, the editor in chief. The division of labor of the English portion is (the surname stroke order): Zhu Jingmei writes Chapter VII, Chapter VIII and Chapter IX, Yuan Xinli writes Chapter III, Chapter IV, Chapter V and Chapter VI, Zeng Meiyun writes Chapter I and Chapter II. The final compilation and editing of the whole book and bilingual proofreading work is completed by Yuan Xinli.

The book is based on the needs of the new situation and strives to be updated in a number of ways. For every translator has different language style, there are inevitable many omissions and irregularities. We sincerely welcome and thank for the criticism and correction coming from peers and students.

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第一章 宪法学基本理论

Chapter 1 Fundamental Theories of Constitution

第一节 宪法学的基本问题

一、宪法的概念

宪法学,即宪法科学,是研究宪法现象及其发展规律的科学。要准确地定位宪法学在各学科中的地位,必须正确地把握宪法的特殊性质,并与其他相关学科相区别。

宪法学是法学学科体系中的部门法学之一。部门法学除了宪法学外,还包括民法学、刑法学、经济法学、商法学、诉讼法学等。宪法学在整个法学体系,尤其是部门法学科中占据特殊地位,这主要是因为宪法学之主要对象宪法是普通法律的根本法、最高法。

二、宪法学的研究对象

宪法学的研究对象就是宪法现象。宪法现象是存在于人的主观意识以外的一种法现象,是各国不同历史时期的成文与不成文宪法的形式及其运行制度(宪法的创制、实施、监督制度)、宪法行为(合宪与违宪),以及宪法关系、宪法文化的总和。

具体到宪法学的教学实践,宪法学的研究对象体现在两个层面:

1.1 Fundamental Questions of Constitution

1.1.1 The Concept of Constitution

Constitution (the science of constitution), is one kind of science which studies the constitution and its regulation of development. In order to accurately position its status in various subjects, we must properly grasp the special nature of the constitutional law, and distinguish it from other related disciplines.

Constitution is a branch subject of disciplinary system of law. Besides it, the departments of law also include civil law, criminal law, economic law, business law, procedural law and so on. Constitution occupies a peculiar position in the legal system mainly because the constitution as the main object of constitutional law is the fundamental law and the highest law of the common law.

1.1.2 The Research Object of Constitution

The research object of constitution is constitutional phenomenon, which is outside of the person's subjective consciousness. It is made of constitutional forms include written constitution and unwritten constitution as well as its operating system (constitutional creation, enforcement, supervising systems), constitutional behavior (constitutional and unconstitutional), constitutional relationship and constitutional culture in different periods.

The research object of constitutional law embodies in two aspects as follows:



第二节 宪法释义

1.2 Interpretation of Constitution

一、词源学意义上的宪法含义

1.2.1 The Meaning of Constitution in Etymology

“宪法”一词,经常可在我国的古代典籍中看到。比如《尚书》中说的“监于先王成宪,其永无愆”,《国语》中说的“赏善罚奸,国之宪法”,《汉书》中也提到“作宪垂法,为无穷之规”。这里所说的“宪”或“宪法”,都是指典章、制度等行为规范。在多数时候,中国古代典籍中的“宪”和“法”是同义语,而且大多含有刑法的意思,因此都属于普通法律,而不是近代意义上的宪法。所以,一般认为,中国古代虽然有词源意义上的“宪法”一词,但并没有近现代根本法意义上的“宪法”这一法律。

The word constitution (xianfa in Chinese) usually appears in our ancient books. For example, just as *The Book of History* saying, “constitution originated according to the former king and can't be transgressed forever”, *Guoyu* saying, “constitution of a nation is to reward good and punish crafty”; *Han Shu* saying, “making constitution and law is endless stipulations”. All the “xian” or “xianfa” in these ancient books refer to norms of behavior such as regulations and system. In most cases, “xian” and “fa” in Chinese ancient books are synonyms mostly with the meaning of criminal law, thus belonging to common law rather than the modern sense of constitution. So, it is generally believed that there was constitution in terms of etymology in ancient China, but no the constitution in the sense of modern fundamental law.

在西方国家,“宪法”这一英文用语来源于拉丁语,原意是组织、规定、确立的意思,最早用于古代罗马帝国的立法中,表示

In western countries, the English term of constitution or constitutional law comes from *Constitutio* in Latin, and the original meaning is organization, rules and establishment. It was used earliest in the legislation of