

## The Chinese System of Interpreting the Law

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### I. A Descriptions of Standards and Facts

Since 1949, China's Constitution and laws have repeatedly formulated regulations concerning the interpretation of Chinese laws.<sup>1</sup> Article 7 of the *Organic Law of the Central People's Government* adopted in September 1949, stipulates that the Committee of the Central People's Government has the power to enact and interpret the laws of the state. Article 31 of the Constitution adopted in 1954 states that the Standing Committee of the National People's Congress (NPC) has the power to interpret the statutes, and the Constitution of 1975 retains this authority. Revisions to the Constitution in 1978 and 1982 went a step further and gave the Standing Committee of the NPC the power "to interpret the Constitution." Article 33 of the *Organic Law of the Court* adopted in 1979 and revised in 1983 stipulates that, "The Supreme People's Court has the power to interpret laws and decrees in their practical applications during the course of trials." The Standing Committee of the NPC passed two special resolutions in 1955 and 1981 on the interpretation of laws. On the basis of the first<sup>2</sup> the second resolutions made stipulations with regard to the principles governing the object, subject, delineation of powers, content and resolution of disputes, and thus the basic framework for the system of interpretation of laws in contemporary China was established.

The *Resolution on Strengthening the Work of Legal Interpretation* adopted at the 19th session of the Standing Committee of the Fifth NPC in 1981 includes the following four provisions: (1) It is up to the Standing Committee of the NPC to make an interpretation or make relevant stipulations by way of a decree if the provisions of a law or decree need to be further defined or supplemented ; (2) It is up to the Supreme People's Court or the Supreme People's Procuratorate to make an interpretation with regard to the practical application of a law or decree during trials or

procuratorial work. If there are differences in principle between the interpretation of the Supreme People's Court and that of the Supreme People's Procuratorate, the matter is to be submitted to the Standing Committee of the NPC for a decision; (3) It is up to the State Council and its competent authorities to make an interpretation if the practical application is outside the judicial and procuratorial fields; and (4) It is up to the standing committee of the province, autonomous region or municipality directly under the central government that enacted the regulation to make an interpretation or make relevant stipulations if the provisions of a local regulation need to be further defined or supplemented, and it is up to the competent authorities of the relevant province, autonomous region or municipality directly under the central government to make an interpretation with regard to the practical application of a local regulation.

From the above provisions it can be seen that: (1) In terms of the object of the interpretation of laws, the first three are related to the laws (including basic laws) adopted by the National People's Congress and its Standing Committee, while the fourth is related to the local laws and regulations adopted by the people's congresses at the provincial level and their standing committees;<sup>3</sup> (2) In terms of the subject of the interpretation of laws, these are the Standing Committee of the NPC, the Supreme People's Court, the Supreme People's Procuratorate, the State Council and its competent authorities, and the standing committees and relevant government authorities at the provincial level; (3) In terms of the division of interpretive authority, authority is divided between the central and local bodies, between legislative and enforcement bodies, and between different functional departments of the enforcement bodies (between judicial and administrative departments, between different judicial departments and between different administrative departments); (4) In terms of the legal content to be explained, these include the more detailed definition or addition of provisions, and the practical application of laws. They are, therefore, all embracing; and (5) In the settlement of disputes related to interpretation of the laws, the primary role of the Standing Committee of the NPC is further emphasized.

The following is a brief description of the interpretation of the laws in China, including more detailed provisions. From this we will gain not only a better perspective on the actual interpretation of the laws and new developments, but we will also see that legal interpretations have not evolved as intended in the resolutions cited above.

1. At the 19th session of The Eighth Standing Committee of the NPC held on 15 May 1996, the committee adopted the *Interpretation of Several Problems Related to the Implementation of the 'National Law of the People's Republic of China' in the Hong Kong Special Administrative Region*. This was the first time that the Standing Committee of the NPC made an express interpretation of a law.<sup>4</sup> Since the Standing Committee

of the NPC only holds a session every two months, it is impossible for it to make regular interpretations of the laws. Since 1979, local government organs and departments have usually addressed their requests for explanations of the laws by the Standing Committee of the NPC directly to the Legislative Affairs Commission of the NPC, which replies (in writing or by telephone).<sup>5</sup> However, since the Legislative Affairs Commission has no power to interpret a law, its replies, although effective, have no definite legal authority.<sup>6</sup>

2. The laws enacted by the Standing Committee of the NPC usually authorize relevant organs to draw up "enforcement regulations," "methods of implementation," "rules for implementation" or "supplementary rules." These organs include the State Council, relevant departments of the State Council (regulations or rules must be submitted to the State Council for approval), the provincial governments (some of the regulations or rules must be submitted to the State Council for approval), and the standing committees of the people's congresses at the provincial level. These enforcement stipulations, in turn, contain their own provisions with regard to interpretation in the same way as the administrative laws and regulations, local laws and regulations and administrative rules (see Points 5 and 6 below).<sup>7</sup> This is a significant trend in exercising the right to legal interpretation. Some of the "basic laws" enacted by the National Standing Committee of the NPC also contain a clause with regard to such authorization.<sup>8</sup>

3. There are a large number of legal interpretations, under a variety of titles and covering a wide field; most are abstract interpretations, and not directed to any particular case.<sup>9</sup> These interpretations are called "suggestions," "explanations," "answers," "stipulations," "decisions," "methods," "official replies in written form," "replies," "letters of reply," "letters" and "summaries of minutes." Their content can be classified as follows: (1) Explanations with regard to the practical application of the law and replies to requests for instructions and letters;<sup>10</sup> (2) Provisions on judicial conduct;<sup>11</sup> (3) Explanations of a provision of the law;<sup>12</sup> and (4) A comprehensive and systematic explanation of the whole law. For example, the *General Principles of the Civil Law of the People's Republic of China* contains a total of 156 articles, but "Suggestions Concerning Problems Related to Implementation of the *General Principles of the Civil Law of the People's Republic of China* (Trial Measures)" consists of as many as 200 articles; this increased to 230 in the revised edition dated 5 December 1990; the *Law of Succession of the People's Republic of China* consists of 37 articles, while "Suggestions Concerning Problems Related to Implementation of the *Law of Succession of the People's Republic of China*" has 64 articles; the *Administrative Procedure Law of the Republic of China* has 75 articles, but the "Suggestions Concerning Problems Related to

Implementation of the *Administrative Procedure Law of the Republic of China* (Trial Measures)" adopted by the Judicial Committee of the Supreme People's Court consists of 115 articles. Such explanations are markedly legislative in nature and are therefore conspicuous and likely to draw criticism. However, opinions were solicited from all sides, including the Legislative Affairs Commission of the NPC before they were published.

4. In terms of the subject of legal interpretations, some interpretations are made independently by the Supreme People's Court or the Supreme People's Procuratorate, some by both of them, and some by both of them together with relevant government departments, and even with the Legislative Affairs Commission of the NPC. Even if many legal interpretations are not made jointly, opinions are sought from relevant functional departments of the state. For example, the Supreme People's Court's "Official Reply Concerning the Handling of Marriage Relations Between Collateral Kin within Three Generations" states in the preamble, "Having considered the opinions of the Legislative Affairs Commission of the NPC, the Ministry of Civil Administration and other organs, we believe. . . ."

The "Resolution on Strengthening the Work of Legal Interpretations" adopted in 1981 does not contain any interpretation of administrative laws and regulations. Of the laws and regulations formulated and promulgated by the State Council, some contain a clause in their supplementary provisions stipulating that the right to interpretation resides with the State Council, and some do not. In most cases, the relevant departments concerned are authorized to formulate rules for their implementation and/or make interpretations; if the laws and regulations are formulated by a relevant department and put into force after being submitted to and approved by the State Council, then usually the department is responsible for their interpretation. (Incidentally, it should be pointed out that the administrative laws and regulations formulated and promulgated by departments under the State Council and local governments at various levels generally contain a provision on their interpretation and that the right to interpretation invariably resides with the formulators themselves or their subordinate organs.)

6. With regard to the interpretation of the local laws and regulations formulated by provinces, municipalities at the provincial level, provincial capital cities and relatively large cities separately listed by the State Council, many of these laws and regulations do not contain any provisions on their interpretation (some have a provision that the government shall formulate "implementing measures"<sup>13</sup>), but most of them do not. Some provisions are "legislative" in nature (with the subject of the interpretation being the standing committee of the people's congress at the same level), and the overwhelming majority of the

provisions involve interpretations of “problems related to practical application.” These laws and regulations generally stipulate that the relevant departments of the government at the same level shall be responsible for interpretation of the “questions related to practical application” (some stipulate at the same time that the government at the same level shall formulate “implementing measures”), but some contain a provision that the government at the same level shall be responsible for interpretation, or that it shall formulate “implementing measures” and at the same time be responsible for interpretation. A few also stipulate that the bureau of legislative affairs of the government at the same level shall be responsible for interpretation.<sup>14</sup>

## II. Basic Conceptions

From this analysis of the provisions and practices of the Chinese system of legal interpretation we can see the following basic conceptions underlying legal interpretation in China and the right to do so:

1. There is no blind faith in the legal statutes in practice and legal interpretation is necessary for the implementation and development of laws.

In the minds of the people, the first objective of a legal construction is that “there are laws and regulations to go by.” Laws and regulations will therefore be continuously produced until the system is perfected, that is, in every area of social life where there is a need for legal control and readjustment there are appropriate laws and regulations to go by. However, in real life this conception is only an ideal and perhaps the objective of “perfection” in legislation can never be attained. (Which country can boast of perfect legislation?) Laws became codified in those nations with a civil legal system, headed by France and Germany after the promulgation of the *French Civil Code* in 1804, leading in the 19th century to a belief in the perfection of the legal statutes and their logical self-sufficiency, and as a result judicial discretion was totally rejected.<sup>15</sup> However, this very soon came under attack theoretically and, what is more, has never been confirmed in real life.

Legal practice is guided not by self-sufficiency but rather by continually developing statutory conceptions, which is most apparent in the recognition of the need for legal interpretation. We can see from the above that there is a positive attitude towards the need for legal interpretation in legal practice in contemporary China. Provisions on legal interpretations in the Chinese laws and regulations are all embracing, and cover not only “questions related to practical application,” but also further definitions and supplementary articles related to the laws and regulations themselves. In relation to the exposition of legal interpretations both in theory and in practice, the

total acceptance of the need for legal interpretation<sup>17</sup> in China may be summarized in the following concrete terms: (1) All legal norms are abstract and generalized and only by means of legal interpretation can they be applied to concrete people and problems in real life; (2) All legal norms should remain stable, and only by means of legal interpretation can they be adapted to real life and people's thoughts which change and develop all the time; (3) Laws need legal interpretation in their application in order to overcome their inherent ambiguity; and (4) A legal norm may be incomplete for a number of reasons and legal interpretation is needed to supplement it.

China is a vast country with a large population and numerous nationalities, and different regions have different levels of development. As a result of these factors, the contradictions between the general provisions of the laws and their practical application are particularly acute and therefore legal interpretation is of particular significance in China. It can thus be said that legal interpretation is an essential prerequisite for the application of the laws, and an important factor in legal development.

2. Legal interpretation is treated as a separate power, somewhat independent of the power to enact or enforce laws.

It is not considered that the authority to interpret the laws is integral to the authority to implement laws. Three concrete propositions are involved here: First, if a body has the power to implement a law, it has the power to interpret it; Second, if a body is given the power to interpret a law, it does not necessarily mean that body has the power to implement the law; Third, the body that has power to implement laws does not necessarily have to interpret the laws it has implemented. For example, since the National People's Congress has the power to enact basic laws related to criminal offenses, civil affairs, state organs and other matters, in the minds of the people it naturally has the power to interpret these laws. However, according to the provisions of the Constitution, the power to interpret these statutes resides with the Standing Committee of the NPC rather than with the NPC. Although the Standing Committee has the power to interpret these statutes, it has no power to enact or amend them. The case is similar with regard to statutes, administrative laws and regulations and local laws and regulations. It should be pointed out here that, although the proposition that "if a body has the power to enact a law, it has the power to interpret it" is not taken from a legal text, it is firmly believed by the people, who generally believe that legal interpretation must conform to the original meaning and intention of the law, and the law-making body has a better knowledge of this than anybody else.

With regard to the relationship between the authority for legal interpretation and the power to enforce a law or the power to make legal decisions according to a law, since the authority to interpret a law has

been given to the Standing Committee of the NPC, the Supreme People's Court, the Supreme People's Procuratorate, the State Council and its relevant departments; the standing committees of the people's congresses and the governments of the provinces, autonomous regions and municipalities or their relevant departments, the people generally do not believe that the power to interpret the law is totally subordinate to the authority to enforce the law or make legal decisions according to the law. In reality, the bodies with the power to enforce laws or to make legal decisions according to the laws do not necessarily have the power to interpret the relevant laws (as a matter of fact, most of them do not have this power), while interpretations made by enforcement bodies with the authority to make legal interpretations are divorced from the legal enforcement or decision-making process in specific cases or in relation to specific problems, although according to legal provisions they should be limited to the "practical application" of the law. The power to make legal interpretation may, in a general sense, therefore be separated from the authority to enforce the law or make legal decisions according to the law.

3. The power to make legal interpretations is divided among different functional departments according to their functional divisions.

Although the Constitution stipulates that only the Standing Committee of the NPC has the power to interpret the Constitution and statutes, the people do not believe that it should exercise such power alone, for, in the eyes of the general public, legal interpretation is a universal need, which arises not only as a result of legal provisions, but also during the process of the practical application of the laws, that is, the need for legal interpretation exists in the areas of both legislation and law enforcement, and involves different state functions—legislative, judicial, procuratorial, and administrative. Since these functions are exercised by different state organs, which operate within their own "spheres of influence," the power to interpret the law is divided in the same way as the separate state functions and is exercised by different relevant departments.

In relation to this division of authority for legal interpretation, the exercise of this power embodies the following three conceptions: First, the laws enacted by the NPC and its Standing Committee are interpreted by the central organs, while local laws and regulations are interpreted by local organs; Second, problems related to the legislation itself or the "texts" of law (i. e., problems related to "further definition and supplementary provisions") are interpreted by the legislative bodies and problems related to enforcement or practical application of the laws are interpreted by enforcement bodies;<sup>18</sup> Third, as far as problems related to enforcement are concerned, judicial, procuratorial and administrative problems are interpreted by related departments in these three areas. At the same time, the people generally believe that the Standing Committee

of the NPC plays the leading role in legal interpretation for the following reasons: (1) It is the leading organ of state power within the state structure; (2) The Constitution stipulates that it alone has the authority to interpret the Constitution and statutes; (3) The Chinese system of legal interpretation is made up of the resolutions and decisions it has adopted; (4) The differences in interpretation between the Supreme People's Court and the Supreme People's Procuratorate should be submitted to it for settlement; and, (5) In the opinion of the public, legal interpretation should reflect and conform to the original legislative meaning or intention and the Standing Committee as a permanent organ of the NPC with legislative power carries greater weight than other bodies in this regard.

4. The power of legal interpretation is monopolized by a few high legislative and law-enforcement bodies and law enforcement is turned, as far as possible, into a process of mechanically applying laws.

As mentioned above, the Chinese people totally affirm the need for legal interpretation, since they believe, on the one hand, that possible omissions must be made good and time lags bridged by legal interpretation, and on the other, that the application of abstract and generalized legal norms to particular people and concrete problems, and overcoming the obscurity and ambiguity inherent in legal norms make legal interpretation indispensable. Law enforcement and legal interpretation are therefore closely related and no one would deny the need for legal interpretation in the enforcement of the law. However, this knowledge is not embodied in the design of legal institutions. To be more straightforward, the concept of a strict distinction between the functions of legislation and law-enforcement, i. e., the concept of strictly "adjudicating according to the law" and "going by the law," still play a leading role in practice,<sup>19</sup> as witnessed by the following: Firstly, as an extension of the differentiation between legislation and law enforcement, there is a differentiation between "articles of law" and "practical application of the law" in legal interpretation (during the phase of law enforcement), with the former interpreted by the legislative bodies; Secondly, law enforcement bodies are responsible for resolving problems related to "practical application," but the term "practical application" is strictly defined so that it does imply legislation;<sup>20</sup> and, Thirdly, the power to make legal interpretations is concentrated in the hands of the Supreme People's Court, the Supreme People's Procuratorate and relevant functional departments of the government, in an attempt to turn law enforcement into a process of the mechanical application of the law.<sup>21</sup> The negation of abstract legal interpretation in real life and the repeated confirmation of the exclusive power of the highest judicial authorities to make legal interpretations and to oppose legal interpretation made by judicial authorities at lower levels highlights my conclusions from the opposite perspective.



### III. Basic Features

We have described and analyzed the system of legal interpretation in contemporary China from the perspectives of legal norms, facts and conceptions. In the author's opinion, this demonstrates that the Chinese system of legal interpretation has strong local features.

According to a basic interpretation of legal theory (and a general understanding of modern legal practice), legal interpretation is an activity closely related to the application of law during court judicial proceedings, and is a precondition for the application of the law by judges. However, legal interpretation in this sense does not apply in China, where legal interpretation is generally divorced from the judges in concrete cases and is defined as a separate power. In the area of adjudication, the Supreme People's Court alone has the power to make legal interpretations. However, in a broader sense, the subject of legal interpretation is by no means only the Supreme People's Court, which, so to speak, does not even play the major role.

If we divide legal practice into two main parts, legislation and law enforcement, we also discover that although, according to the provisions of the Chinese Constitution and statutes, legal interpretation is an activity that takes place during the period of enforcement and after the law has been adopted (if we say that legal interpretation as a separate power that is relatively independent of the power to enact and enforce laws is the basic precondition for the emergence of the Chinese system of legal interpretation,<sup>22</sup> then law enforcement is the foundation of its existence), in the public eye, this involves legislation as well as law enforcement, so the subjects of legal interpretation are not limited to law enforcement departments (judicial and administrative departments), but also include legislative organs with the Standing Committee of the NPC in the leading role. We can therefore say that legal interpretation is an area administered jointly by various state functional organs.

The basic features of the Chinese system of legal interpretation may thus be summarized as follows:

First, there is a monopoly within respective fields, i. e., the relevant functional organs exercise, in a unified way, the power to make legal interpretations within their respective fields, for example, the Supreme People's Court holds the power in the area of adjudication, the Supreme People's Procuratorate has power in the procuratorial field, and the State Council or its relevant departments have authority in the field of administration;

Second, division of labor with individual responsibility, including the division of labor between the central and local departments, between legislative, judicial and administrative departments, between different

departments within the judicial system, and between different departments within the administrative system;

Third, the legislative organ (the Standing Committee of the NPC) plays the leading role even though in terms of quantity it does not do the major part of interpreting.

Is the Chinese system of legal interpretation with its unique characteristics reasonable in design?<sup>23</sup> Many questions have been raised in the light of its actual operation; some of the more contentious are: some legislative interpretations exceed the limitations of legal interpretation and constitute amendments to the Constitution;<sup>24</sup> the Standing Committee of the NPC rarely exercises its authority for legal interpretation or loses it (to its working body or other organs); some abstract and concrete judicial interpretations exceed the authority; the exclusive powers of legal interpretation (e. g., the exclusive powers for legislative and judicial interpretation) are violated. It is true that these questions have been raised out of respect for the existing system of legal interpretation and in the hope of its further improvement, but the author does not consider these only minor issues; on the contrary, the fact that these problems have arisen and that they have existed for a long time gives us sufficient grounds to doubt the whole system. Analysis of these problems has led to the conclusion that they are inherent in the system and therefore unavoidable.

### Notes

1. "Interpretation of the laws" here refers mainly to the interpretation of the Constitution, basic laws, laws, administrative regulations and local regulations. However, the author has also taken into consideration the interpretation of departmental rules and regulations, rules and regulations of local governments at various levels, and other normative documents.
2. The Resolution on Interpretation of the Laws adopted by the Standing Committee of the NPC in June 1955 stipulates that it is up to the Standing Committee of the NPC to make interpretations or relevant stipulations by way of a decree if the provisions of a law or decree need to be further defined or supplemented and that it is up to the Judicial Committee of the Supreme People's Court to make interpretations for the practical application of a law or decree.
3. The fourth provision is expandable. With the legislative power for local laws and regulations delegated to the people's congresses and their standing committees of provincial capitals and relatively large cities separately listed by the State Council, the application of this provision has been extended.
4. The legal interpretations given by law-makers exist mainly in four forms: (1) As interpretive clauses inserted in the text of the law or in its supplementary provisions; (2) As "rules for implementation" or "supplementary rules" laid down by the departments concerned according to authorization given by the laws (such as the *Trademark Law*, the *Patent Law*, the *Copyright Law* and the *Marriage Law*); (3) As an attached explanation when the law is submitted for consideration and approval; and (4) As a decision, resolution or additional regulation made by the Standing Committee of the NPC in view of questions raised in the course of implementation of

the laws (refer to the author's paper "A Study of Problems Related to Legal Interpretations in Contemporary China" published in *Social Sciences in China*, 1995, no. 5).

5. For example, "Replies to Questions about the Understanding and Implementation of the Laws" written by the Law Legislative Affairs Commission of the NPC contains 26 questions and answers. The interpretations mentioned in this article can be found in *Collected Normative Interpretations of the Laws of the People's Republic of China*, Jilin People's Publishing House, 1990 and 1991 and in the enlarged edition if they were made before 1990.
6. It should be pointed out that sometimes the Legislative Affairs Commission of the NPC makes legal interpretations in conjunction with the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice, for example, "Joint Circular Concerning the Right to Vote of Criminals Undergoing a Sentence and Persons under Detention," dated 24 March 1984, and "Circular Concerning How Cadres and Policemen Engaged in Reform-through-Labor Should Apply Provisions on Judicial Personnel in the Criminal Law," dated 10 July 1986. These show that the Legislative Affairs Commission functions as a legislative body and does more than practical legal interpretation.
7. For example, Article 42 of the *Trademark Law* stipulates that, "The competent department in charge of industry and commerce under the State Council shall formulate rules for its implementation which shall be put into force after being submitted to and approved by the State Council." Article 48 of the "Rules for Implementation of the *Trademark Law* stipulates that, "The State Administration for Industry and Commerce shall be responsible for interpretation of these rules."
8. For example, Article 56 of the *Economic Contract Law of the People's Republic of China* stipulates that, "The competent departments under the State Council and the people's governments of provinces, municipalities directly under the control of the central government and autonomous regions may, in accordance with this law, formulate rules for its implementation which shall be put into force after being submitted to and approved by the State Council."
9. Concentration of the right to legal interpretation in the hands of the highest judicial organs will inevitably result in abstraction, even if legal interpretation is defined as an attempt to solve problems related to the practical application of the laws.
10. Some of these explanations and replies are aimed at a broad category of cases, for example, "The Supreme People's Court's Reply to Questions Concerning Practical Application of the Laws in Trials of Serious Criminal Cases by the People's Courts," issued on 30 September and 30 December 1983, and 21 August 1985; Some are aimed at a particular category of cases, for example, "Circular of the Supreme People's Court and the Supreme People's Procuratorate Concerning Handling Road Traffic Infringements in Strict Accordance with the Law," dated 21 August 1987; Some at specific questions, for example, "The Supreme People's Court's Official Reply on Whether the Period of Detention for the Person Suspected of Smuggling by Customs Should Be Deducted from His Term of Sentence," dated 9 February 1988. Replies to questions related to civil cases are also aimed at specific cases, but the title of the document often details the nature of the questions but omits the names of the parties concerned, for example, "The Supreme People's Court's Official Reply on Whether the Relations of Rights and Obligations Between Stepparents and Stepchildren Can Be Dissolved," dated 22 January 1988.
11. For example, "Specific Provisions on Legitimate Defence by the People's Policemen While on Duty," jointly formulated by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the State Security Ministry and the Ministry of Justice on 14 September 1983, "Trial Measures for Collecting Fees in Civil Cases," passed by the Judicial Committee of the Supreme People's Court

- on 30 August 1984, and "The Supreme People's Court's Decision on Several Problems Related to the Establishment of Maritime Courts," dated 28 November 1984.
12. For example, "Joint Circular of the Supreme People's Court and the Supreme People's Procuratorate Concerning the Scope of Application of the Subject of Crime as Stipulated in Article 114 of the Criminal Law," dated 21 June 1986, and "Official Reply of the Supreme People's Court and the Supreme People's Procuratorate Concerning the Application of Article 153 of the Criminal Law," dated 16 March 1988.
  13. It is generally understood that these "implementing measures" imply interpretation and these measures usually contain provisions on the interpretation of "problems related to practical application."
  14. The interpretation of local laws and regulations, just as with administrative laws and regulations, has not yet received enough attention from researchers. The generalization of the interpretation of local administrative laws and regulations here is based on the 61 local laws and regulations in *China Law Yearbook* (China Law Yearbook Press, 1992 and 1993).
  15. Strict division of power between the legislature and the judiciary, judgment according to the law and strict restriction of judicial discretion have been basic legal concepts and practices in modern and contemporary times. These concepts arose as a reaction against pre-modern judicial tyranny, as shown by definite stipulations in the French Civil Code and the concept of jurisprudence prevalent in the 19th century.
  16. Liang Huixing, "New Developments in the Study of Legal Interpretations of the Civil Laws," *Studies in the Legal Interpretation of the Civil Laws*, The Chinese University of Politics and Law Press, 1995, chapter 5.
  17. However, legal interpretation (including legislative interpretation) is different from legislation. Within the total affirmation of the need for legal interpretation there is some confusion between legal interpretation and legislation. This will be discussed below.
  18. Please note that although according to the Chinese Constitution and laws legal interpretation constitutes an act at the stage of enforcement and after the law has been enacted, people do not believe that it involves problems related only to law enforcement as opposed to legislation.
  19. Article 4 of the French Civil Code stipulates that "The judge who refuses to judge, on the pretext of the silence, obscurity or insufficiency of the law, may be prosecuted as guilty of a denial of justice." And Article 5 of the same Code stipulates that "Judges are forbidden to pronounce decisions by way of general and regulative dispositions on cases which are submitted to them." (*The French Civil Code*, Revised Edition, Fred B. Rothman & Co., USA, 1995.) These provisions mean that the legal statutes were considered perfect and logically self-sufficient, and that they could be neither "silent" nor "obscure." It was therefore not necessary for judges to have "general and regulative dispositions" in their trials. Moreover, they would violate the legal principle of a division of power between the legislature and the judiciary if they did so.
  20. However, at least with regard to the practice of judicial interpretation, it can be seen that the concentration of power for judicial interpretation in the hands of the highest judicial authority makes abstract judicial interpretation inevitable, and invariably gives a legislative tone to provisions "practical application."
  21. This has not been accomplished in practice, since, theoretically, it is not possible to remove legal interpretation from law enforcement.
  22. In this sense, the existence of a relatively independent system of legal interpretation cutting across existing legislative and law-enforcement boundaries is unique. If the system of legal interpretation were not defined as a separate power but were treated as a legal technique, a subordinate activity or a necessary step for the courts to take

during their judicial activities, or, in a broader context, as a subordinate activity or a necessary step for the legislative body in exercising its power to enact laws or law enforcement bodies in exercising their authority for law enforcement, there would be no system of legal interpretation.

23. Perhaps some would say that, like anything with unique characteristics, the Chinese system of legal interpretation is more an empirical fact than a result of design. The rationality of its existence does not therefore lie in logic, but in the facts, in whether or not it is actually effective. The reason that questions are raised about rationality in the design of the Chinese system of legal interpretation is because various problems have arisen during its implementation and its rationality cannot be proved by its effectiveness.
24. For example, it has been pointed out that the "Decision on the Exercise by the State Security Organs of the Public Security Organs' Functions and Powers of Investigation, Detention, Pre-trial and Arrest," adopted by the 20th Session of the Standing Committee of the NPC, is generally considered an interpretation of Articles 37 and 40 of the Constitution. In fact, this is not an interpretation of the Constitution; the Standing Committee overstepped its authority and made a decision on a matter that should have been handled by the National People's Congress, since this "Decision" constitutes an amendment to the Constitution. (Yuan Jiliang, "On the Drawbacks of the System of Legislative Interpretation," *Law Studies in China*, 1994, no. 4.) Since the Standing Committee has the power to interpret and amend statutes, in practice people are unconcerned about confusions of this kind.

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