

# CONSTITUTIONAL LAW IN CHINA

THIRD EDITION

XU CHONGDE  
NIU WENZHAN

# **Constitutional Law in China**



# **Constitutional Law in China**

**Third Edition**

**XU Chongde  
NIU Wenzhan**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Constitutional Law.

Founding Editor: Roger Blanpain  
General Editor: Frank Hendrickx  
Volume Editors: André Alen & David Haljan



**Wolters Kluwer**

*Published by:*

Kluwer Law International B.V.  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
E-mail: [international-sales@wolterskluwer.com](mailto:international-sales@wolterskluwer.com)  
Website: [irus.wolterskluwer.com](http://irus.wolterskluwer.com)

*Sold and distributed in North, Central and South America by:*

Wolters Kluwer Legal & Regulatory U.S.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@wolterskluwer.com](mailto:customer.service@wolterskluwer.com)

*Sold and distributed in all other countries by:*

Air Business Subscriptions  
Rockwood House  
Haywards Heath  
West Sussex  
RH16 3DH  
United Kingdom  
Email: [international-customerservice@wolterskluwer.com](mailto:international-customerservice@wolterskluwer.com)

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper*

ISBN 978-94-035-0731-6

e-Book: ISBN 978-94-035-0732-3  
web-PDF: ISBN 978-94-035-0733-0

© 2019, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

Permission to use this content must be obtained from the copyright owner. More information can be found at: [irus.wolterskluwer.com/policies/permissions-reprints-and-licensing](http://irus.wolterskluwer.com/policies/permissions-reprints-and-licensing)

Printed in the United Kingdom.

## The Authors



Xu Chongde was born in Qingpu, Shanghai in 1929. He received his Bachelor's Degree from the Fudan University Department of Law in 1951 and, after obtaining his Graduation, started his teaching career at the Renmin University of China Law School in 1953. Xu Chongde was appointed as professor and tutor for doctoral students in 1986 and has been teaching Constitutional Law at the University since then. Beginning in the late 1980s, he has been invited to lecture at the University of Macao, the City University of Hong Kong, Seoul National University, Chungang University, New York State University, Yale University, and Ritsumeikan University. It is well known in China that Xu Chongde gave lectures on Constitutional

Law for the Standing Committee of the National People's Congress in 1998 and for the first learning meeting of the Central Political Bureau of the Communist Party of China (CPC) in 2002. In March 2014, Xu Chongde died in Beijing.

In 1954, Xu Chongde, was a contributor to the drafting of the *Constitution of 1954*, engaging in collecting relevant information. In 1979, he participated in the draft and revision of the *Organic Law of Local People's Congresses and Governments at All Levels* and the *Election Law*. From 1980 to 1982, as a member of the Secretariat of the 'Constitutional Revision Committee', he was involved in the drafting of the current Constitution. He was nominated by the Standing Committee of The National People's Congress (NPC) as a member of the drafting committee for the *Basic Law of Hong Kong Special Administrative Region* in 1985 and for the *Basic Law of Macao Special Administrative Region* in 1988. Also, he was nominated by the Standing Committee of the NPC as a member of the preparatory committee of the Hong Kong Special Administrative Region in 1995 and of the Macao Special Administrative Region in 1998; thus witnessing the establishment of two special administrative regions.

Before his death, Xu Chongde had been a member of the academic committee of the Law Society of China and Honorary President of the Constitution Research Association of China and also held offices as vice president of the Political Research Association of China, the editor of the Political System volume of the Chinese Encyclopaedia, among other positions. Xu Chongde had been engaged in teaching and legal research since 1953 and had made bold innovations to the structure of constitutional textbooks. Some of his research results and opinions regarding the matters, for instance, that the president of the People's Republic of China (PRC) shall 'engage in activities

## The Authors

involving State affairs' and the protection of human rights should be written into the Constitution had been accepted by the Central Authority.

Xu Chongde has published 318 academic articles to date and has also published scholarly works, as an author, contributor, or chief editor, in 75 different categories of books, including the *Constitutional History of the PRC*, *Discussing the Constitution by Learning*, *Theory of Power Division*, *Head of State*. One of the textbooks, *Constitutional Law of China* by the Press of Renmin University in 1988, has been published several times with over one million copies issued. *The Constitutional History of the PRC* won the Special Prize for outstanding achievement at the Eighth Beijing Philosophy and Social Sciences Congress in 2004 and again gained the Special Award of the Fifth Wu Yuzhang Humanities and Social Science Congress in 2007. Xu Chongde was designated, through online national voting hosted by China Central Television (CCTV), as the leading Rule of Law Figure in 2004. In January 2009, he was granted an Outstanding Contribution Certificate by the Beijing Education Committee and Beijing Degree Committee.



Niu Wenzhan was born in Yongji City, Shanxi Province in December 1975. He received his Master's Degree and Doctoral Degree as a Constitutional and Administrative Law Major at the Renmin University of China Law School in 2004 and 2007, respectively. He gained a Bachelor of Arts Degree from the School of Foreign Languages, Beijing Forestry University in 1996. He has worked at the Standing Committee of the National People's Congress since July 2007. He has published articles on Chinese constitutional issues, including

*Some Suggestions on the Fourth Amendment to the Current Constitution* (2004), *Development and Perfection of State Organs of China* (2006), and *How the Supervision Law Perfects the System of Reporting the Regulations for Record in China* (2007), and two works, one being *Administrative Law in the Political System* (3rd edition) (Kenneth F. Warren, translated from English into Chinese and published by the Press of Renmin University in 2005), and the other being *Interpretation System of the Macao Basic Law*, published in the Macao Special Administrative Region of China in 2011.

# Table of Contents

The Authors	3
List of Abbreviations	15
Preface	17
General Introduction	19
Chapter 1. Brief Introduction of the Constitutional History of China	19
§1. CONSTITUTIONS BEFORE THE ESTABLISHMENT OF THE PEOPLE'S REPUBLIC OF CHINA	19
I. Preparations of Constitution-Making Late in <i>Ding</i> Dynasty	19
II. Provisional Constitution	20
III. Constitutions During the Periods of the Northern Warlords and the Nanjing National Government	20
A. Constitutions During the Periods of the Northern Warlords	20
B. Constitutions of the Nanjing National Government	21
IV. Constitutional Documents in the Revolutionary Base Areas	21
§2. CONSTITUTIONS AFTER THE ESTABLISHMENT OF THE PEOPLE'S REPUBLIC OF CHINA	22
I. The Common Programme of the Chinese People's Political Consultation Conference	22
II. The Constitution of 1954	24
III. The Constitution of 1975	26
IV. The Constitution of 1978	27
V. The Constitution of 1982	27
VI. Amendments to the <i>Constitution of 1982</i>	29
A. Amendments to the Constitution in 1988 (Articles 1–2)	29
B. Amendments to the Constitution in 1993 (Articles 3–11)	29
C. Amendments to the Constitution in 1999 (Articles 12–17)	30
D. Amendments to the Constitution in 2004 (Articles 18–31)	30
E. Amendments to the Constitution in 2018 (Articles 32–52)	31

## Table of Contents

Chapter 2. PRC, A Socialist Country	33
§1. THE CLASS STRUCTURE OF POLITICAL POWER	33
I. The People's Democratic Dictatorship Is Led by the Working Class	33
II. The People's Democratic Dictatorship Is Based on the Alliance of Workers and Peasants	34
III. The People's Democratic Dictatorship Perseveres in and Solidifies the Patriotic United Front	34
§2. THE ECONOMIC BASIS OF THE STATE	35
I. The Socialist Public Ownership of the Means of Production Lays the Foundation of the Socialist Economic System	35
II. The Non-Public Sectors of the Economy Constitute an Important Component of the Socialist Market Economy	36
§3. THE GUIDING IDEOLOGY OF THE STATE	36
I. The Decision of the Policy of Reform and Opening Made under the Guidance of Marxism	37
II. Guaranteeing the Socialist Character of Market-Oriented Economy Institution	38
III. Promoting the Building of a Moderately Prosperous Society in All Respects	39
Chapter 3. PRC, A Developing Country	42
Chapter 4. The Basic Task of the Nation: Socialist Modernization	44
Part I. The Form of Government and the Political System of PRC	47
Chapter 1. The State Structure Form of PRC	47
Chapter 2. The Organization Form of Government of PRC	49
§1. RELATIONS BETWEEN THE PEOPLE AND STATE POWER	49
§2. RELATIONS BETWEEN THE PEOPLE AND THE ORGANS WHO EXERCISE STATE POWER	49
§3. RELATIONS BETWEEN THE ORGANS EXERCISING STATE POWER AND OTHER STATE ORGANS	49

## Table of Contents

§4. RELATIONS BETWEEN THE CENTRAL AUTHORITY AND LOCAL ORGANS OF STATE	50
Chapter 3. The System of Multiparty Cooperation and Political Consultations under the Leadership of CPC	52
Part II. Form of Government of the PRC	57
Chapter 1. General Review of the Structure of the State	57
§1. THE STRUCTURE OF THE STATE IN THE COMMON PROGRAM OF 1949	57
§2. THE STRUCTURE OF THE STATE IN THE CONSTITUTION OF 1954	58
§3. THE STRUCTURE OF THE STATE IN THE CONSTITUTION OF 1975 AND THE CONSTITUTION OF 1978	58
§4. THE STRUCTURE OF THE STATE AND ITS DEVELOPMENT IN THE CONSTITUTION OF 1982	59
Chapter 2. The National People's Congress	60
§1. NATURE AND STATUS OF THE NPC	60
§2. COMPOSITION, TERMS OF SERVICE AND FUNCTIONS, AND POWERS OF NPC	60
§3. RULES OF MEETINGS AND PROCEDURES FOR THE NPC	61
§4. SPECIAL COMMITTEES AND COMMITTEES OF INQUIRY INTO SPECIFIC QUESTIONS OF NPC	63
§5. DEPUTIES TO NPC	63
Chapter 3. The Standing Committee of the National People's Congress	65
§1. NATURE AND STATUS OF THE NPCSC	65
§2. COMPOSITION, TERM OF SERVICE, AND FUNCTIONS AND POWERS OF NPCSC	65
§3. FUNCTIONS AND POWERS OF NPCSC	66

## Table of Contents

Chapter 4. The President of the PRC	68
§1. ESTABLISHMENT AND DEVELOPMENT OF THE PRESIDENCY OF PRC	68
§2. ELECTION AND TENURE OF THE PRESIDENT OF PRC	68
§3. FUNCTIONS AND POWERS OF THE PRESIDENT OF PRC	69
Chapter 5. The State Council	70
§1. NATURE AND STATUS OF THE STATE COUNCIL	70
§2. COMPOSITION, LEADERSHIP SYSTEM AND MEETINGS OF THE STATE COUNCIL	70
I. The Composition of the State Council	70
II. The Leadership System of the State Council	71
III. The Meetings of the State Council	71
§3. FUNCTIONS AND POWERS OF THE STATE COUNCIL	72
§4. STRUCTURE OF THE STATE COUNCIL	73
Chapter 6. The Central Military Commission	75
§1. NATURE AND STATUS OF THE CENTRAL MILITARY COMMISSION	75
§2. COMPOSITION OF THE CENTRAL MILITARY COMMISSION	75
§3. LEADERSHIP SYSTEM OF THE CENTRAL MILITARY COMMISSION	75
§4. FUNCTIONS AND POWERS OF THE CENTRAL MILITARY COMMISSION	76
Chapter 7. The Local People's Congresses and Local People's Governments at Various Levels	77
§1. LOCAL PEOPLE'S CONGRESSES AT VARIOUS LEVELS	77
I. Nature and Status	77
II. Composition and Term of Office	77
III. Functions and Powers	77
IV. Special Committees and Committees of Inquiry into Specific Questions	78
V. Deputies to Local People's Congresses at Various Levels	79
§2. STANDING COMMITTEES OF THE PEOPLE'S CONGRESSES AT AND ABOVE THE COUNTY LEVEL	79
I. Nature and Status	79

## Table of Contents

II. Composition and Term of Office	79
III. Functions and Powers	80
§3. THE PEOPLE’S GOVERNMENTS AT VARIOUS LEVELS	81
I. Nature and Status	81
II. Composition and the Leadership System	81
III. Functions and Powers	82
Chapter 8. The Organs of Self-Government of the National Autonomous Areas	84
§1. A GENERAL INTRODUCTION OF THE ORGANS OF SELF-GOVERNMENT OF NATIONAL AUTONOMOUS AREAS	84
§2. NATURE AND STATUS OF THE ORGANS OF SELF-GOVERNMENT OF NATIONAL AUTONOMOUS AREAS	84
§3. MEMBERS OF THE ORGANS OF SELF-GOVERNMENT OF NATIONAL AUTONOMOUS AREAS	85
§4. POWER OF AUTONOMY OF THE ORGANS OF SELF-GOVERNMENT OF NATIONAL AUTONOMOUS AREAS	85
Chapter 9. The State Supervisory Commission	88
§1. GENERAL INTRODUCTION	88
§2. COMPOSITION AND TERM OF OFFICE OF THE SUPERVISORY COMMISSIONS	88
§3. CREATION AND ORGANIZATIONAL STRUCTURE OF THE SUPERVISORY COMMISSIONS	88
§4. FUNCTIONS AND POWERS OF THE SUPERVISORY COMMISSIONS	89
Chapter 10. The People’s Courts and the People’s Procuratorates	90
§1. THE PEOPLE’S COURTS	90
I. Nature of the People’s Courts	90
II. Creation of the People’s Courts	90
III. Organization of the People’s Courts	91
IV. Functions and Powers of the People’s Courts	91
V. Principles of Judicial Work	91
§2. THE PEOPLE’S PROCURATORATES	92

## Table of Contents

I. Nature and Status of the People's Procuratorates	92
II. Creation and Organizational Structure of the People's Procuratorates	94
III. Functions and Powers of the People's Procuratorates	94
IV. Principles of Procuratorial Work	95
Chapter 11. The Political System of the Special Administrative Region	97
§1. THE 'ONE COUNTRY, TWO SYSTEMS' POLICY AND THE SYSTEM OF THE SPECIAL ADMINISTRATIVE REGION	97
§2. STATUS AND CHARACTERISTICS OF THE ORGANS OF THE SPECIAL ADMINISTRATIVE REGION	98
I. Status of the Organs of the Special Administrative Region	98
II. Characteristics of the Organs of the Special Administrative Region	98
§3. THE CHIEF EXECUTIVE OF THE SPECIAL ADMINISTRATIVE REGION	99
§4. THE EXECUTIVE AUTHORITIES OF THE SPECIAL ADMINISTRATIVE REGION	101
§5. THE LEGISLATURE OF THE SPECIAL ADMINISTRATIVE REGION	102
§6. THE JUDICIAL ORGAN OF THE SPECIAL ADMINISTRATIVE REGION	103
Part III. Fundamental Rights and Freedom of Citizens of PRC	107
Chapter 1. Human Rights and Fundamental Rights of Citizens	107
§1. CLASSIFICATION OF FUNDAMENTAL RIGHTS	108
§2. NATURE OF FUNDAMENTAL RIGHTS	108
Chapter 2. Right to Equality and Political Rights	109
§1. RIGHT TO EQUALITY	109
I. Conception of the Right to Equality	109
II. Contents of the Right of Equality	109
§2. POLITICAL RIGHTS	110
I. Conception of Political Rights	110
II. The Right to Vote and Stand for Election	110

## Table of Contents

III. Freedom of Speech	110
IV. Freedom of the Press	112
V. Freedom of Association	112
VI. Freedom of Assembly, of Procession, and of Demonstration	113
Chapter 3. Freedom of Religious Beliefs	115
Chapter 4. Freedom of the Person	117
§1. SAFEGUARDING THE RIGHT TO LIFE	117
§2. FREEDOM OF THE PERSON IS INVOLABLE	117
§3. PERSONAL DIGNITY IS INVOLABLE	118
§4. RESIDENCE IS INVOLABLE	120
§5. FREEDOM AND PRIVACY OF CORRESPONDENCE ARE PROTECTED	120
Chapter 5. Social and Economic Rights of Citizens	122
§1. RIGHT TO PROPERTY	122
§2. RIGHT TO WORK	122
§3. LABOURER'S RIGHT TO REST	122
§4. RIGHT TO SOCIAL SECURITY	123
§5. RIGHT OF ACCESS TO MATERIAL ASSISTANCE	123
Chapter 6. Cultural and Educational Rights	125
§1. CONCEPT OF CULTURAL AND EDUCATIONAL RIGHTS	125
§2. THE RIGHT TO RECEIVE EDUCATION	125
§3. RIGHT TO ENGAGE IN CULTURAL PURSUITS	126
Chapter 7. The Right of Supervision and the Right to Claim	127
§1. THE RIGHT OF SUPERVISION	127
I. The Right to Criticize and the Right to Make Suggestions	127
II. The Right to File Complaints and Charges	127
III. The Right of Appeal	127

## Table of Contents

§2. THE RIGHT TO CLAIM	128
Chapter 8. The Consistency Between the Fundamental Rights and Duties of Citizens	129
§1. GENERAL INTRODUCTION	129
§2. PRINCIPAL CONTENTS OF FUNDAMENTAL DUTIES OF CITIZENS	129
I. The Duty to Safeguard the Unification of the Country and the Unity of All Its Nationalities	129
II. The Duty to Abide by the Constitution and Other Laws	129
III. The Duty to Safeguard the Security, Honour, and the Interests of the Motherland	130
IV. The Duty to Perform Military Service in Accordance with Law	130
V. The Duty to Pay Taxes in Accordance with the Law	130
Part IV. National Symbols	131
Chapter 1. The Defining of the National Flag, the National Emblem, the National Anthem, the Capital and the Way of Numbering the Years	131
Chapter 2. Brief Introduction of the National Flag, the National Emblem, the National Anthem, the Capital and the Way of Numbering the Years	133
§1. THE NATIONAL FLAG	133
§2. THE NATIONAL EMBLEM	133
§3. THE NATIONAL ANTHEM	133
§4. THE CAPITAL	133
§5. THE WAY OF NUMBERING THE YEARS	134
Chapter 3. The Establishing of the National Constitutional Day	135
Chapter 4. The Constitutional Oath System	136

## Table of Contents

Appendix I. The Administrative Division of the People's Republic of China	137
Appendix II. The System of the People's Congress in the People's Republic of China	138
Appendix III. The Central People's Government of the People's Republic of China from 1949 to 1954	139
Appendix IV. The Central State Structure of China prescribed by the 1954 Constitution of the People's Republic of China	140
Appendix V. The Central State Structure of China prescribed by the 1975 Constitution of the People's Republic of China	141
Appendix VI. The Central State Structure of China prescribed by the 1978 Constitution of the People's Republic of China	142
Appendix VII. The Central State Structure of China prescribed by the 1982 Constitution of the People's Republic of China	143
Selected Bibliography	145
Index	147