

Study on the Delimitation of Legislative Powers of Local People's Congresses and Their Standing Committees

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The comprehensive rule of law era necessitates law as a governance instrument, with prioritized legislation and legislative process democratization. Chinese local legislation faces discrepancies, notably the ambiguous demarcation between the standing committee and local people's congresses, with the former often formalizing and the latter marginalizing lawmaking. Enhancing the local legislative system requires a rational division of legislative authority between these bodies. This paper traces the historical development of their legislative powers, analyzes theoretical perspectives on power division, assesses provincial and municipal legislation's empirical challenges, and proposes a path for rational competence division to bolster local legislation.

Keywords: local people's congress, local people's congress standing committee, local legislative competence, division of legislative competence

Historical Development of the Legislative Power of Local People's Congresses and Their Standing Committees

1949-1980

From 1949 to 1980, China's legislative authority was predominantly centralized under the National People's Congress (NPC), with local entities devoid of legislative powers. The 1954 Constitution led to the establishment of local people's congresses, yet without their own standing committees. Amidst the shift towards socialist modernization, the necessity for localized legislation became apparent, given the limitations of the NPC and its standing committee to cater to diverse regional needs. This necessitated the Local Organizations Law, which stipulates the creation of standing committees for local people's congresses above the county level. These committees, for provinces, autonomous regions, and centrally governed municipalities, may legislate on local regulations during inter-congress periods, provided they align with higher-level laws and policies, thereby decentralizing legislative powers while ensuring national legislative unity.

Promulgation of the Local Organizations Act, 1980

On July 1, 1979, the Fifth National People's Congress' Second Session enacted the Law on Local Organizations, granting provincial-level people's congresses the authority to legislate on local regulations, subject to national laws and policies. The 1980 revision extended this power to larger municipalities approved by the State Council, albeit with significant central government oversight. Despite the Local Organizations Law

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empowering these bodies, the absence of constitutional recognition limited the standing committees' legal status and their legislative effectiveness. The rapid increase in legislative efficiency underscored the significance of the establishment of the local people's congresses' standing committees, which inevitably prompted a revision of the Constitution, since the legislative power of the local people's congresses' standing committees is guaranteed and supported only when it is explicitly provided for in the Constitution.

Promulgation of the Current Constitution in 1982

On December 4, 1982, the Fifth National People's Congress' Fifth Session enacted the revised Constitution, which, in Articles 96 and 103, mandates the establishment of standing committees for people's congresses above the county level and grants provincial and centrally administered municipal congresses, along with their standing committees, the authority to legislate local regulations, subject to higher-level laws. This constitutional recognition expands upon the 1980 Local Organizations Law, removing the requirement for alignment with policies and decrees and streamlining the reporting process to the National People's Congress' Standing Committee, excluding the State Council. This evolution signifies a significant broadening of the legislative scope for local legislative bodies.

Two Consecutive Amendments to the Law on Local Organizations in 1982 and 1986

The 1982 amendment to the Local Organizations Law introduced the concept of legislative power for administrative regions below the provincial level, albeit limited to drafting local laws and regulations, with final enactment authority residing with higher-level provincial and autonomous region standing committees. The 1986 revision further delineated the legislative powers of larger municipal congresses, requiring their bills to be submitted to the next higher-level congress for approval, and detailed the interim legislative powers of these municipalities' standing committees. Notably, the revised law omitted references to decrees, focusing on alignment with the Constitution, laws, and administrative regulations. Despite these developments, the Constitution and the Local Organizations Law lack clarity on the division of legislative powers between local congresses and their standing committees, leading to a discrepancy between theoretical provisions and practical application, with standing committees often shouldering the bulk of legislative responsibilities due to the annual congresses' limited time and scope for lawmaking.

Legislation Act 2000

The 2000 Legislative Law of the People's Republic of China defines the scope of legislative authority for local legislative bodies, including provincial, autonomous region, and directly governed municipality people's congresses and their standing committees, as well as larger municipalities such as provincial capitals, State Council-approved cities, and special economic zones. Despite the clarity on the entities possessing legislative power, there is a lack of distinct division of competencies between the local people's congresses and their standing committees, leading to a situation where the standing committees often exercise predominant legislative authority. The Legislative Law attempts to address this imbalance by outlining specific matters that are exclusively within the legislative purview of the local people's congresses. However, in legislative practice, the effectiveness of this delineation is limited. Issues arise due to the standing committees' rights to amend local laws and regulations enacted by the congresses, among other reasons. This state of affairs creates significant obstacles to the development and progression of local legislation in China, highlighting the need for further refinement in

the legislative framework to ensure a more equitable distribution of legislative powers between local people's congresses and their standing committees.

Amendment of the Legislation Act in 2015

In 2015, in the process of amending the Legislative Law, the provincial people's congress, local people's congresses, and standing committees of the legislative power of the boundary level did not change; and in the municipal people's congress level, the larger municipalities added the concept of "municipalities with districts" to the concept of the three types of larger municipalities, but not limited to the three types of larger municipalities, but not limited to this, the municipalities of the districts are also part of the larger municipalities. The legislative powers of "municipalities with districts" include the protection of urban and rural culture and historical and cultural management, as well as the protection of the environment in three major areas, at which point the legislation needs to be reported to the Standing Committee of the Provincial People's Congress for approval (Xu, 2021).

The Constitutionality of the 1982 and 1986 Amendments to the Local Organizations Law With Regard to the Legislative Power of Local People's Congresses and Their Standing Committees

The 1982 and 1986 amendments to the Local Organizations Law were essentially a reconfiguration of local legislative power, a configuration that to some extent exceeded the scope of the current constitutional provisions on local legislative power. While the current Constitution provides that local legislative power is limited to provincial-level people's congresses and their standing committees, the amended Local Organization Law grants legislative power to provincial capitals and larger cities approved by the State Council. Whether this expansion of the scope of local legislative power provided for in the Constitution constitutes a violation of the Constitution, there are two distinctly different views in the academic community.

On the one hand, some scholars believe that the granting of legislative power to provincial capital cities and larger cities approved by the State Council under the amended Local Organization Law is inconsistent with the scope of local legislative power under the Constitution and constitutes a violation of the Constitution. This view holds that the Constitution, as the fundamental law of the land, has supreme legal status, and that no law or regulation may contravene the Constitution. The expansion of the scope of local legislative power in the amended Local Organization Law goes beyond the provisions of the Constitution and therefore constitutes a violation of the Constitution. On the other hand, some scholars believe that although the expansion of the scope of local legislative power in the amended Local Organizations Law is inconsistent with the provisions of the Constitution, this does not constitute a violation of the Constitution. Laws and regulations can be appropriately expanded within the framework of the Constitution as long as they do not contravene the provisions or the spirit of the Constitution. The expansion of the scope of local legislative power under the amended Law on Local Organizations, although inconsistent with the provisions of the Constitution, does not contravene the provisions and spirit of the Constitution, and therefore does not constitute a violation of the Constitution.

From the perspective of legal theory, both views have their rationality. However, to judge whether the amended Local Organizations Law constitutes a violation of the Constitution, it is necessary to analyze it from the perspective of China's constitutional practice and in the context of China's political system and legal system.

In China, the power of constitutional interpretation belongs to the Standing Committee of the National People's Congress (NPCSC); therefore, the question of whether the amendment of the Local Organizations Law violates the Constitution should ultimately be authoritatively interpreted by the NPCSC (Song, 2022). In summary, although the granting of legislative power to provincial capital cities and larger cities approved by the State Council under the amended Local Organization Law is inconsistent with the scope of local legislative power under the Constitution, this does not necessarily constitute a violation of the Constitution. An authoritative interpretation of this issue by the Standing Committee of the National People's Congress is still required (Wang, 2017).

Problems With the Scope and Delimitation of the Legislative Competence of Local People's Congresses and Their Standing Committees Under the Law on Local Organizations and the Law on Legislation

Lack of a Clear Legal Basis for the Division of Legislative Competence Between Local People's Congresses and Their Standing Committees

Since the 1979 Constitution, provincial and some large municipal people's congresses have been granted legislative authority, yet the boundaries of this power remain ambiguous. Article 100 of the Constitution and Article 7 of the Law on Local Organizations have attempted to clarify the division of legislative competence between local congresses and their standing committees, but these provisions have not resulted in significant changes in practice. Articles 76 and 77 of the Legislative Law introduced new criteria for matters of special significance and legislative procedures, but their generality and formality have limited their practical effect. The 2000 Legislation Law made the first distinction between the legislative competence of local congresses and their standing committees through Articles 67 and 68. However, the ambiguity of "matters of special significance to the administrative region" in Article 67 has led to differing academic interpretations. Some argue that these matters should include those regulating the powers and functions of the National People's Congress and its Standing Committee, while others believe they should include local matters of a general, fundamental, and particularly important nature (Qian & Zhao, 2020). There is a debate in the academic circle regarding whether the scope of "matters of special significance for the administrative region" should be specifically defined in the empirical law, with some arguing against it and others in favor of it. While there have been attempts to define the legislative competence of local congresses and their standing committees, the lack of clarity and specificity in these provisions has limited their practical impact. Further refinement and clear criteria are needed to effectively divide legislative powers between local congresses and standing committees.

The Standing Committee of the Local People's Congress Is in a Better Position Than the Local People's Congresses to Enact Legislation

The legislative efficiency of local people's congresses is constrained by the brevity of their annual sessions, in contrast to the more frequent and extended meetings of the standing committee. The Law on Local Organizations mandates at least one annual session for local NPC, but the duration is determined provincially based on necessity, without strict parameters. Given the numerous agenda items and the imperative to exercise most powers through meetings, these sessions are the primary conduit for duty fulfillment. Despite the complexity of the legislative process and the limited annual gatherings, deputies must allocate considerable time to auditory reports. The standing committee, with its simpler convening process and ampler meeting frequency, is better

positioned to handle the legislative workload. The Law on Local Organizations stipulates a minimum of six meetings yearly for the standing committee, enabling it to manage its substantial legislative responsibilities with a smaller group of members (Chao & Lin, 2022). The quality and quantity of legislation are enhanced by the higher overall quality of standing committee members, who are not encumbered by the part-time nature of NPC deputies. The meeting agendas of local NPC are burdensome due to the necessity of exercising nearly all powers via meetings, making them the quintessential method for deputies to execute their roles. However, the once-yearly meetings and the intricate legislative procedures tax the deputies' time, impacting legislative efficiency. The standing committee's legislative capacity surpasses that of the NPC, benefiting from the ease of convening and the greater availability of its members. The discrepancy in legislative capacity is further pronounced by the higher overall quality of standing committee members, who are typically elite among the NPC deputies and thus better equipped to satisfy the rigorous demands of legislation (Peng & Kang, 2019).

Lack of Awareness of the Importance of Legislation by Local People's Congresses

Societal confusion between the Standing Committee of the National People's Congress and local people's congresses has exacerbated the erosion of the congressional system. Since 1979, the standing committee has increasingly assumed the roles of local congresses, particularly in legislation, leading to a power imbalance. The standing committee independently determines major matter scope and wields significant personnel authority. It also handles supervisory functions, with the congresses largely absent from specific issue investigations. This has led to the perception of the standing committee as a dominant force with broader legislative powers. Despite constitutional and legal provisions granting deputies legislative proposal and bill introduction rights, these are not smoothly exercised in practice. Deputies, especially grassroots-level, face challenges in local legislative engagement, often overshadowed by the standing committee. Few deputies actively participate in legislation, and some leaders are hesitant to enhance the congresses' role, preferring to adhere to legal minimums to avoid complexity. This approach further diminishes the legislative function and influence of the congresses (Li & Ye, 2022).

The Practice of Delimiting the Legislative Competence of Local People's Congresses and Their Standing Committees in Various Provinces, Autonomous Regions and Municipalities Directly Under the Central Government, and the Problems Thereof

The Standing Committee of the National People's Congress (NPC), intended as an alternative body to the Congress itself, should ideally represent the comprehensive interests of the entire region. However, the reality is marked by deficiencies. Geographically, the membership is often skewed towards delegates from the provincial capital, resulting in a lack of diverse regional representation. This imbalance is further compounded by a sectoral composition that fails to adequately reflect the range of industries and trades within the province. For instance, many members are drawn from administrative and business leadership, potentially overlooking the voices of workers and grassroots sectors. Furthermore, the standing committee's engagement with voters is notably lacking. While representatives are expected to initiate contact with their constituents, members of the standing committee are not bound by similar obligations. This disconnect weakens the representative function of the Committee and undercuts the principle of voter representation (Li, 2014).

The Legislative Law of 2000 sought to address these issues by defining the legislative competence of local people's congresses and their standing committees. However, the ambiguity surrounding "particularly important matters" in Article 67, coupled with the limited scope of Article 68, has led to varied interpretations and applications across different provinces and cities. In practice, provinces and cities have adopted diverse strategies to define the legislative authority of local people's congresses and their standing committees. Some provide only general terms without specific enumerations, focusing on procedural aspects rather than substantive matters. Others offer detailed lists of matters for regulation, while a few do not define the scope of "matters of special significance" at all. This patchwork approach to defining legislative powers underscores the complexity and diversity of legislative practice in China. It highlights the need for clearer guidelines and more inclusive representation to strengthen the effectiveness and legitimacy of the legislative process. Only through enhanced representation, clearer delineation of powers, and strengthened voter engagement can the standing committee truly fulfill its role as a representative body of the people.

Ideas for Improving the Delimitation of the Legislative Powers of Local People's Congresses and Their Standing Committees

In analyzing the scope and character of "matters of special significance" under Article 67 of the 2000 Legislation Law, it is crucial to recognize its correlation with the "matters of significance" in the Constitution and the 1979 Law on Local Organizations. The latter's Articles 7(3) and 28(3) delineate the jurisdiction of local people's congresses and their standing committees, which encompasses a range of administrative region's key affairs. However, the 2000 Legislation Law, while seeking to define the legislative jurisdiction of these bodies by granting them the authority to decide on such matters within their jurisdictions, fails to clarify the term "matters of special significance". Consequently, this responsibility defaults to local legislative bodies (Liu, 2016).

The nature of this deciding power is thought to be distinct from, yet potentially overlapping with, the legislative, appointment, and supervisory powers. It is imperative that in defining the scope of "matters of special significance", the legislative matters set forth in Article 68 of the Legislation Law are not inadvertently included. With regard to the subject matter entitled to delimit the legislative competence of the local people's congresses and their standing committees, there are two understandings: One is that it can only be defined by the National People's Congress and its standing committee, since "matters of special significance" refer to more significant issues other than the significant matters set out in Article 8 of the Local Organizations Law; and the other is that it can be defined by the local people's congresses and their standing committees, since "matters of special significance" can be defined by them. The second is that it can be defined by the local people's congresses and their standing committees, because "matters of special significance" refer to issues of particular prominence within the matters of significance listed in Article 8 of the Local Organizations Law. From the perspective of the Local Organizations Law, it seems that the second position should be taken, i.e., "matters of special significance" refer to issues of special prominence within the significant matters listed in Article 8 of the Local Organizations Law. However, if the local people's congresses and their standing committees were to have the power to define "matters of special significance", the demarcation of legislative competence would not be realized. Therefore, it is necessary to structurally transfer the power to define "matters of special significance" to the local people's congresses independently through technical means.

With regard to the ways and means of delineating the legislative competence of local people's congresses and their standing committees, there are various ways of defining "matters of special significance", but each of them has its shortcomings. In contrast, it is preferable to indicate a path for defining "matters of special significance", rather than specifying in the legislation which matters are or are not "matters of special significance". The key lies in the establishment of scientific procedures to incorporate the power to recognize "matters of special significance" into the legislative or decision-making process, to be exercised by a specific body with the authority to do so (Pang, 2014). For example, the provisions of Article 6 of the Regulations of Beijing Municipality on the Formulation of Local Laws are a worthy example. It is advisable to outline a process for defining "matters of special significance" rather than enumerating them in legislation. This can be achieved through establishing scientific procedures to incorporate the recognition of such matters into the legislative or decision-making process by an authorized body. The Regulations of Beijing Municipality on the Formulation of Local Laws offers a useful framework.

To enhance legislative quality, it is proposed to introduce debate sessions and center the deliberation mechanism on specialized committees to capitalize on their expertise, prevent legislative biases, and improve efficiency. Additionally, the introduction of legislative assistants could further elevate legislative standards. Given the susceptibilities of legislative power to expansion, corruption, and manipulation by interest groups, reinforcing legislative supervision is vital. This can be accomplished by local NPC proactively supervising the standing committee's legislative actions, enhancing the scrutiny of its legislative agenda, and compelling the standing committee to report on regulations to the General Assembly. Concurrently, the National People's Congress Standing Committee should actively review local laws and regulations to ensure they align with the Legislative Law's provisions.

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