

INDEX OF ARTICLES RELATED TO CONSTITUTIONAL REFORM

SELECTED PRC LAW JOURNALS, 2002 to mid-2003

YEAR and VOL. NUMBER	ARTICLE TITLE	AUTHOR(S)	NOTES
CASS (法学研究)			
2002.1	Reviewing the Legal Basis for Legal Rights in Constitutional Theory (评法权宪法论之法理基础), p. 25	Qin Qianhong (秦前红)	Theoretical – justifies the basis for constitutional rights.
2002.2	The Constitutional Composition and the Realization of Fundamental Rights (基本权利的宪法构成及其实证化), p. 45	Zheng Xianjun (郑贤君)	Discusses the three types of fundamental rights: (i) natural rights; (ii) civil and political rights; and (iii) social and economic rights.
	Constitutional Reality and Constitutional Concepts (宪法的现实世界与观念世界), p.____	Tong Zhiwei (统之伟), Liu Maolin (刘茂林), Liang Zhongqian (梁忠前)	Discusses problems in the academic study of constitutional law.

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2002.5	An Introduction to the “Genetics” of Constitutionalism (宪法基因概论处—英美宪政生成路径的启示), p. 120	Qian Fuchen (钱福臣)	Compares British and U.S. constitutional law. Makes the argument that certain national characteristics are needed in order for a constitution to be implemented. These include: individual claims of right; pluralistic political power; and supremacy of law.
	An Analysis of the Proposition That the 1912 Provisional Constitution was “Legislation Suited to a Particular Person” (《临时约法》“因人立法”说辩证), p. 152	Liu Ducai (刘笃才)	Analyzes the idea that the 1912 Constitution was structured in order to limit Yuan Shikai’s power. Concludes that the 1912 Constitution was written in a fashion that primarily protected the interests of respective members of the cabinet.
2003.1	Characteristics of the Process of the Development of a Modern Constitution (现代宪法产生过程的特点), p. 99	Xu Chongde (许崇德)	Discusses how to create a constitution. Methods include: supporting the Party; relying on the wisdom of the common people; using legal specialists; incorporating debate; and establishing a constitutional committee within the NPC to research and advise on recommendations.

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	Summary of an Informal Discussion on the Occasion of the 20 th Anniversary of the Promulgation of the Current Chinese Constitution (纪念宪法颁布 20 周年座谈会纪要), p. 152		<p>This is a transcript of a discussion between law professors.</p> <p>Part Four (Strengthening Supervision of Constitutional Implementation) is relevant to enforcement issues. Makes some suggestions for changes to the Constitution and the establishment of supervisory agencies. Professor Ren Jin, in particular, talks about implementing a constitution that limits government power. Courts need to be given the power to hear cases so they can serve as a check on the government's authority.</p>
CHINA LEGAL SCIENCE (中国法学)			
2002.1	<i>No relevant articles</i>		
2002.2	Case Studies on Constitutional Interpretation (宪法解释案例实证问题研究), p. 72	Zhou Wei (周伟)	States that decisions of the NPC Standing Committee on conflicts between the Constitution and local regulations are not official constitutional interpretations, but they still fulfill an important role.

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2002.6	A Preliminary Study on Constitutional China (宪政中国初论), p. 24	Zhou Yezhong (周叶中), Deng Lianfan (邓联繁)	Argues that China needs constitutionalism before it can truly become a rule of law system. States that a “constitutional China” is more desirable than a “democratic China.”
2003.1	On the Direction of the Form of China’s Constitution (论我国宪政模式的走向), p.14	Zhen Xianjun (郑贤君)	Discusses: (i) the establishment of liberal-democratic constitutionalist traditions; (ii) the legacy of Marxist constitutionalism; (iii) the attractiveness of a liberal-democratic-socialist constitutional system model.
2003.3	On the Arrangement of China’s Constitution and its Amendments (我国宪法原文与修正案的组织问题), p. 3	Tong Zhiwei (童之伟)	Discusses the structural arrangement and organization of the Constitution.
	On the Choice and Content of Current Models of Constitutional Change (关于现行宪法变革的模式选择和部分内容), p. 10	Ren Jin (任进)	This article has some concrete suggestions relevant to a discussion of constitutional enforcement.

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	On the Constitutional Implication of “Like Case, Like Treatment” (同案同判的宪政意义及其实证研究), p.133	Bai Jianjun (白建军)	Argues that there should be consistent application of laws for consistent judgments, but that this is not occurring in practice. Evaluates two solutions: (i) a system of monitoring judicial quality; and (ii) a case acceptance reference system.
2003.4	A Summary of the Academic Conference “The Sun Zhigang Case and Constitutional Review” (“孙志刚案与违宪审查”学术研讨会综述), p. 189	Deng Shaoling (邓少岭)	
JOURNAL OF POLITICAL SCIENCE AND LAW (政法论丛) – Shandong Political-Legality Management Cadre Institute (山东省政法管理干部学院)			
2003.4	The Insufficiencies of and [Need to] Improve the Constitution’s Regulation of the Freedom of Speech (我国宪法制度对言论自由规定的不足及其完善), p. 52	Sun Ning (孙宁), Jun Deliang (君德亮)	Argues that freedom of speech is a fundamental right. International covenants, the constitutions of other countries, and the Chinese Constitution all confirm the fundamental nature of freedom of speech. However, the Constitution lacks clarity and the regulations governing speech are too simple. All of this results in insufficient rights protection. China must perfect the applicable constitutional regulations, clearly set out the limits of freedom on speech, and legislate accordingly.

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LAW REVIEW (法学评论) – Wuhan University (武汉大学)			
2002.2	Concept of Freedom in Constitutionalism (略论宪政的自由之维), p. 30	Zhan Meixie (占美铤)	General idea is that the purpose of constitutionalism is to protect freedom and rights.
2002.3	Methodological Basis of Constitutional Jurisprudence (宪法学的方法论基础), p. 3	Zhao Shiyi (赵世义)	Pessimistic article. Argues that study of the Constitution has its limits and that the contribution such study makes is negligible. Additionally, people engaging in such study should not make excessive demands for constitutional change.
	On Fundamental Problems of Constitutional Jurisprudence (论宪法学基本问题), p. 8	Wu Jiaqing (吴家清)	Argues that the main problem in constitutional jurisprudence is balancing the rights of the people against the government's power.
	On Constitutional Lawsuits and their Application to China (也论宪法诉讼及其在我国的应用), p. 17	Liu Yunlong (刘云龙)	
2002.4	Tradition and Change: The Magnificent Journey of British Constitutionalism (传统与变革: 英国宪政的成长之路程华), p. 3	Cheng Hua (程华)	Comparative

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2002.6	The 1982 Constitution and China's Constitutional Government (82 年宪法与中国宪政变一与在 82 年宪法颁布实施 20 周年之际), p. 3	Zhou Yehua (周叶华), Jiang Guohua (江国华)	Argues that the Chinese Constitution has contributed to the stability of the past 20 years and rapid economic development. However, the Constitution has had its share of problems and internal conflicts, including the “double-tracking” of rights.
2003.3	The Cultural Significance of a Constitution Code (宪法典的文化意义), p. 3	Ren Xirong (任喜荣)	Says that a constitution is necessary for a modern society.
LAW SCIENCE (法学) East China University of Politics and Law (华东政法学院)			
2002.2	The Limitations of Democracy and the Contradictions Between and Integration of Democracy, Republicanism, and Constitutionalism (民主的限度及其与共和, 宪政的矛盾统一), p. 3	Guo Daohui (郭道晖)	Discusses the tension between majority rule and rights protection.
2002.4	Seeking the Rule of Virtue in the Context of Constitutional Principle (寻求宪法原则下的德治), p. 3	Zhou Yongkun (周永坤)	Argues that constitutional rule should be guided by virtue.

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2002.8	Constitutional Protection of Equality in Employment for Chinese Citizens (论我国公民平等工作权的宪法保护), p. 20	Zhu Yingping (朱应平)	Concludes that employment rights are not satisfactory at the moment and must be improved. The Constitution will gain more authority if employment rights are implemented.
2003.1	Optimizing the Constitution to Keep Pace with the Times – Eleven Suggestions on Amending and Interpreting the Constitution in Accordance with the Spirit of the 16 th National Congress of the CPC (与时俱进完善宪法规定—循<十六大>精神修宪或释宪的十一点设想), p. 3	Tong Zhiwei (童之伟),	Suggestions include: protection of property; improving the rule of law; incorporating property rights as a basic right; abrogating sections pertaining to the economy; safeguarding the rights of citizens to initiate lawsuits; and change the phrase “standardize judicial power” to “independent judicial review, submit to the law”; among others.
	To Write a New Chapter of Constitutionalism under the Guidance of the Spirit of the 16 th National Congress of the CPC (在<十六大>精神指引下谱写宪政新篇章), p. 13	Li Buyun (李步云), Liu Zhiwei (柳志伟)	States that there needs to be improvement of protecting private property rights, promoting the independent administration of justice, and the safeguarding of human rights.
	The Function of the System of Interpreting the Constitution must be Consolidated in the Aftermath of the 16 th National Congress of the CPC (<十六大>后须强化宪法解释制度的功能), p. 18	Han Dayuan (韩大元)	States that ensuring the full implementation of a judicial review system is important. Calls for more research into standards and procedures for judicial review.

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	Political Civilization and China's Constitutional Development (政治文明与中国宪法发展), p. 23	Zhou Yongkun (周永坤)	Argues that a good constitution is necessary for "political civilization." A constitutional review system should be established. The People's Congress and a separate judicial organ should conduct constitutional review. Otherwise, there will not be successful judicial review.
2003.4	A Positive Analysis of "Basic Laws" in the Text of the Constitution (宪法文本中基本法律的实证分析), p. 3	Han Dayuan (韩大元), Liu Songshan (刘松山)	Discusses the importance of the basic law in relation to the Constitution.
2003.7	Forum: Freedom, Order, and Rule – Theoretical Pondering on Sun Zhigang's Case (自由秩序规则—孙志刚案的法理思考), p. 3	Tong Zhiwei (童之伟), et al.	
	Norm and Duty: The Positive Interaction of the Constitution and Criminal Procedure (规范与当为: 宪法与刑事诉讼的良性互动), p. 34	Wang Jian (王戩)	Argues that there can be constitutional protections and standards set up for criminal enforcement. Protecting rights by strengthening the Constitution will benefit criminal enforcement.
2003.8	Comments on the Force of Constitutions in Emergency (论紧急状态下的宪法教力), p. 37	Guo Chunming (郭春明)	Writes even in the event of a national crisis, constitutional rights cannot be ignored. But upholding the Constitution cannot come at the expense of national interests. By

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			emphasizing a separation of powers and the value in safeguarding fundamental human rights, a proper balance between the two can be obtained.
LAW SCIENCE (法律科学) – Journal of Northwest University of Politics and Law (西北政法学院学报)			
2002.1	The Constitutional Basis and Republican Spirit of the Great Western Development Campaign (西部大开发的宪政基础与共和精神), p. 15	Guo Daohui (郭道晖)	Discusses how the drive to develop the China's western regions is supported by the Constitution.
	No Litigation, No Constitutionalism (无诉讼即无宪政), p. 22	Jiang Guohua (江国华)	Argues that constitutional suits are necessary to ensure constitutional rule by law.
2002.3	On the Sociological Concept of Constitutional Science, p. 29 (宪法的社会学观)	Zheng Xianjun (郑贤君)	Points out that the separation of state and society is the result of establishing a proper constitutional relationship.
2003.2	Theoretical Links Between Political Civilization and Constitutional Civilization (政治文明与现政文明关系论纲), p. 15	Yin Xiaohu (殷啸虎), Zhang Haibin (张海斌)	States that “constitutional civilization brings about modern political civilization.” Recommends that China absorb the beneficial experiences of world political civilization and the construction of constitutional civilization.

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2003.3	The Current Political Orientation and Shortcomings of the Chinese Constitution (中国宪法的现政取向与缺失), p.9	Li Lin (李林), Xiao Junyong (肖君拥)	Argues that having a constitutional government is a way to realize democracy, freedom, human rights, rule of law, and justice. It is also beneficial in protecting social order and stability. The current Constitution favors the supremacy of the State.
2003.4	Suggestions on Revising the Preamble and General Principles of the Constitution (对《宪法》“序言”和总纲的修改建议), p. 3	Ma Ling (马岭)	Argues that historical descriptions, names, and words such as “class struggle” should be deleted. Provisions on the nature of the State and “spiritual civilization” should be added. The order of provisions should be rearranged and some articles of other chapters and sections should be put in the preamble. Contents governing the economic system should be reduced.
MODERN LAW SCIENCE (现代法学) – Southwest University of Political Science and Law, Chongqing (中国重庆西南政法大学)			
2002.2	An Analysis of Constitutional Concepts (宪法概念的分析), p. 3	Xin Yuan (馨元)	Abstract and theoretical discussion on forms of state power and regulation of such power.
2002.3	A Jurisprudential Analysis of Value and Function of the Constitution (宪法价值与功能的法理学分析), p. 25	Zhu Fuhui (朱福惠)	States that a constitution distributes political power, normalizes the state’s power, prevents social violence, and readjusts the relationship between different interest groups.

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2002.4	Constitutionalism: A Harmonious Living Philosophy (宪政:谐的生活哲学), p. 38	Zhou Zhixuan (周志轩), Jiang Guohua (江国华)	Concludes that a constitution is a contract between the people and their government. Rule by constitution is based on democracy and ensures that state power does not interfere with human rights.
2002.5	Constitutionalism – the Greatest Embodiment of Human Civilization (宪政变—人类法治文明的最高结晶), p. 38	Wen Zhengbang (文正邦)	Abstract article. Says rule by law requires constitutionalism. Discusses the relationship between constitutionalism and democracy, as well as the relationship between governing by law and human rights.
2002.6	On the Sacred Value of the Constitution (论宪法的验性价值), p. 9	Mo Zhihong (莫志宏)	Argues that an ideal constitutional system would have the backing of “sacred values.”
	Perfecting the Constitutional Review System in China (论我国的违宪审查体制与完善), p. 119	Tang Zhongmi (唐志民)	Deals with enforcement.
2003.2	Special Characteristics of the “Ecologicalization” of Constitutional Rights in the Environmental Age (环境时代宪法的权利生态化特征), p. 128	Chen Quansheng (陈泉生)	Deals solely with environmental issues.

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2003.3	The Comparison of the Function of Constitution (宪法的功能比较), p. 48	Chen Liming (陈力铭)	Compares China's Constitution with those in the West. Discusses the implication of the differences for China's future constitutional development.
PEKING UNIVERSITY LAW JOURNAL (中外法学)			
2002.1	What is Constitutional Law? (关于什么是宪法), p. 92	Cai Dingjian (蔡定剑)	Discusses whether: (i) a constitution is a political law; (ii) comprises all regulations; is (iii) is civil or common law; and (iv) people can negate unconstitutional acts.
POLITICAL SCIENCE AND LAW (政治与法律) – Shanghai Academy of Social Science Legal Research Institute (上海社会科学院法学研究所)			
2003.1	Philosophical Perspectives on the Constitution (宪法的哲学之维), p. 9	Liu Zhigang (刘志刚)	States that the purpose of a constitution is to regulate conflicts between people and the state by balancing state power and rights.

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TRIBUNE OF POLITICAL SCIENCE AND LAW (政法论坛) – Journal of China University of Political Science and Law (中国政法大学报)			
2003.2	On the Principle of the Presumption of Constitutionality in Constitutional Interpretation Procedures (论宪法解释序中的合宪性推定原则), p. 3	Han Dayuan (韩大元)	Discusses the use of a “constitutionality presumption” to settle the problem of balancing different values.
	The Types and Function of Constitution Procedure (宪法程序的类型从及功能), p. 8	Mo Jihong (莫纪宏)	Says that guaranteeing the definitiveness of constitutional norms should be the basis for perfecting constitutional interpretation and revision. The Constitution should stipulate the power of the People’s Congresses. It should also establish a procedure for protecting citizens’ rights.
	Preliminary Inquiry into Several Issues Concerning the Perfection of Constitutional Procedure (完善宪法程序若干问题初探), p. 13	Tong Zhiwei (童之伟)	

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	On the Space for the Judicial Application of the Constitution (论我国宪法司法使用的空间), p. 18	Jiao Hongchang (焦洪昌)	Argues that people's courts should be able to "judicially apply" the Constitution with regards to questions arising from civil cases, administrative cases, or criminal cases.
	Perfection of China's Procedure for Revising the Constitution (我国宪法修改程序的完善), p. 24	Liu Maolin (刘茂林)	Recommends that procedures, activities of deliberation, and organs that can propose constitutional amendments should be specified.
	On "Judicialization" of Constitutional Supervision (论宪法监督的司法化), p. 29	Li Shuzhong (李树忠)	