CHAPTER 11

Legislative Interpretation by China’s National People’s Congress Standing Committee

A Power with Roots in the Stalinist Conception of Law

Sophia Woodman*

The idea that the roots of the power of the National People’s Congress Standing Committee (NPCSC) under Article 67(4) of the Constitution to interpret the law lie in the civil-law system has featured in a number of articles on the subject. In statements defending the first interpretation of the Hong Kong Basic Law by the NPCSC in 1999, the Hong Kong government asserted that various European legal systems have or had an analogous power.

I believe this claim is misleading. While the idea of legislative interpretation may originate in the separation of powers instituted in France in the immediate postrevolutionary period, the NPCSC’s particular variant comes from the legal order established under Stalin to serve “victorious socialism” and the fusion of powers in the Soviet state. This chapter will focus on the genealogy of the NPCSC’s interpretation power to elucidate some aspects of its nature.

The Chinese Communist Party (CCP) has never undergone de-Stalinization—Stalin’s picture still appears in the Chinese version of the pantheon of Marxist heroes. In fact, de-Stalinization in the Soviet Union was one of the causes of the Sino-Soviet split in the early 1960s.

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Of course the Chinese state and its legal system are not mere clones of their Soviet precursors. As a number of authors have pointed out, pragmatism may have been more important than ideology in shaping the Chinese legal order in the reform era. The influence of Soviet thinking on some of the key elements of the Chinese legal system should not be discounted, however; in the key period of the early 1950s when the PRC’s first constitution was drafted, Soviet influence was at its height, and the legal thinking received was that of the Stalin era. The main reason the CCP moved to begin drafting a constitution in 1952 was that Stalin had three times pressed the party to do so, some writers assert. The current Chinese Constitution, promulgated in 1982 and revised four times since then, is modeled on the 1954 Constitution, harking back to what is still seen as the formative moment for socialist law in China.

**Interpretation of Law, Not Constitution**

Discussions of the interpretation question have generally failed to distinguish between the exercise of the constitutional power to interpret laws (Article 67[4]) and the power to interpret the constitution and supervise its enforcement (Article 67[1]). These powers are listed separately in the enumeration of the NPCSC’s powers in the 1982 Constitution. The power of constitutional interpretation did not appear in the 1954 Constitution, which, like the 1936 Stalin Constitution, which was its model, only listed the power to interpret law (Article 31[3]).

The NPCSC has not exercised its power under Article 67(1). As Cai writes, “In our country, as yet there is no specific procedure for the NPCSC to exercise its power to interpret the Constitution, so this type of interpretation has not been practised.” This situation reflects the lack of effective mechanisms for enforcing the Chinese Constitution, despite increasing pressure from Chinese jurists to establish some means for addressing unconstitutional acts and conflicts of laws.

But the NPCSC has used its power to interpret laws, even as early as the 1950s. In 1955, the NPCSC issued a “Resolution Regarding Questions of Interpretation of Law,” which stipulated that the NPCSC would use this power in situations when clear definitions or additional stipulations were required and also allowed the Supreme People’s Court (SPC) to make interpretations on the application of law in adjudication. The 1981 “Resolution on Strengthening the Work of Interpretation of Law” was a response to requests for interpretations of the new laws being issued by the NPC and provided for interpretation powers to be exercised by a number of additional bodies: the Supreme People’s Procuratorate and the State Council and its departments,