

# On the Ultimate Authority of the Constitution of the People's Republic of China in the Special Administrative Regions

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It is generally believed that the *Constitution of the People's Republic of China* (hereinafter as "the Constitution") approved by the 5<sup>th</sup> National People's Congress (NPC) at its 5<sup>th</sup> session in 1982 led to the constitutionalisation of the "One Country, Two Systems" policy since Article 31 was added to the Constitution providing "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions." The NPC further enacted the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereinafter as "the Hong Kong Basic Law") and the *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as "the Macao Basic Law") based on the above provision, which was respectively passed and enacted on 4<sup>th</sup> April 1990 and 31<sup>st</sup> March 1993. However, in the past practice of the "One Country, Two Systems" policy, people have paid more attention to the Basic Laws than to the Constitution, and they failed to realize that the order of constitutionalism created by the "One Country, Two Systems" policy is a system of legal authority formed jointly by the Constitution and the Basic Laws. By analyzing and interpreting the relationship between the Constitution and the Basic Laws and that between the Constitution and the Special Administrative Regions (SARs), this article reveals that the Constitution is the legal document with ultimate authority in the SARs under the "One Country, Two Systems" policy.

## I. Relationship between the Constitution and the Basic Laws

### 1.1 Sources of the Basic Laws

The issue about the source of the Basic Laws requires integrated research since it involves not only the discussion about the relationship between the Basic Laws and the Constitution, but also the probe into the relationship between the Basic Laws, the NPC, and the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* (hereinafter as "the Sino-British Joint Declaration") and the *Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao* (hereinafter as "the Sino-Portuguese Joint Declaration").<sup>1</sup>

A probe into the Article 31 of the Constitution indicates that the Constitution only provides the legality of establishing SARs when necessary and the legality of the legislation on the systems to be instituted in SARs by the NPC; nevertheless, it does not ensure the inherent constitutionality of the laws so made by the NPC. In reality, the constitutionality of the Basic Laws made by the NPC according to Article 31 of the Constitution is approved and confirmed in accordance with the

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*Decision of the National People's Congress Concerning the Basic Law of Hong Kong Special Administrative Region* and the *Decision of the National People's Congress Concerning the Basic Law of Macao Special Administrative Region* which were respectively made by the NPC while promulgating the two Basic Laws. Although there is jurisprudential discrepancy on such self-approval system of the constitutionality of the Basic Laws as it is different from the international custom of judicial review exercised by judicial body or constitutional committee, it further indicates, at least in reality, that the NPC is the direct source of the Basic Laws.

We can refer to the Preambles of the Basic Laws for the relation between the Basic Laws and the Joint Declarations. Taking the Macao Basic Law as an example, it is written in the Preamble of the Macao Basic Law that "The basic policies of the People's Republic of China regarding Macao have been elaborated by the Chinese Government in the Sino-Portuguese Joint Declaration... the National People's Congress hereby enacts the Basic Law of the Macao Special Administrative Region of the People's Republic of China, prescribing the Systems to be practiced in the Macao Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Macao." An examination of the original text of the Joint Declarations indicates that the detailed contents of the Joint Declarations are the origins of various provisions of the Basic Laws. That is, the major contents of the Basic Laws originate from the Joint Declarations instead of the Constitution.

According to the above analysis, how do we define the legal sources of the Basic Laws? The legal source of the Basic Laws can be interpreted from different perspectives in the light of different definitions of "legal source" in jurisprudence.

In civil law countries, the term "legal source" generally refers to the source of force of law, statutory law, common law and treaties are deemed as the only source of law. This idea of "pure legal document" can also be traced in common law countries. For example, Hans Kelsen, the representative of the pure theory school of law, believes that legal norms are the source of law, any superior legal norms are the source for the inferior legal norms, and the source of law is always the law itself.<sup>2</sup> According to this theory, both the Constitution and the Joint Declarations can become the source of the Basic Laws, but they are also distinctive from each other. As the supreme legal document of a state, the Constitution is the original source of the Basic Laws. Although the Basic Laws are made by the NPC, and its constitutionality is also confirmed by the NPC, the power of the NPC still originates from the authorization of the Constitution. It is obvious that the international treaties in general sense should not become the source of the domestic laws. However, the Joint Declarations signed by the Chinese Government and the British Government and Portuguese Government respectively are very special, and the second item of the main body of the respective Declaration provides the basic policies of the Chinese Government on the Questions of Hong Kong and Macao (12 items in all), which were adopted completely into the two Basic Laws later. Therefore, it is also known to all that the Joint Declarations are inalienable source of the Basic Laws.

With respect to the NPC, it can also be included as the source of the Basic Laws according to the classification of legal source by Thomas Erskine Holland, the representative of the early analytical school of law. One classification refers to legal source as "some state organs through which the state can recognize the legal effect of the rules without any authority, or the state organs can make new laws, that is, case laws, equity laws and statutory laws."<sup>3</sup> Thus, the NPC can also be included as the source of the Basic Laws. So, the Constitution and the NPC become the source of the Basic Laws as the superior legal document and the law making body respectively, they both represent the essential source of the Basic Laws, that is, the state power.

## **1.2 The Basic Laws are not "mini-constitutions"**

The Basic Laws are called mini-constitutions among the scholars and academics. However,

such name might confuse the Constitution and the Basic Laws in their nature and legal status because the core term of “mini-constitution” is still “constitution” although it is modified with “mini”, therefore, further clarification is needed in this respect.

Generally speaking, the Basic Laws cannot be regarded as the equivalent of the “mini-constitution” in the SARs. The reasons are as follows:

Firstly, the unitary state structure is practiced in People’s Republic of China (PRC) and there can be only one constitution with ultimate legal authority in a state with unitary state structure. There is only one constitution which is irreplaceable.<sup>4</sup>

Secondly, the name of “mini-constitution” can easily be confused with the state constitutions in federal countries. The fundamental distinction between the Basic Laws and the state constitutions is that the state constitutions are made by the state legislature while the Basic Laws are not made by the legislature in the SARs; instead, they are made by the NPC.

Therefore, it is proper to regard the Basic Laws as the constitutional legal document of the SARs. With respect to the legal status, the Basic Laws are the supreme legal documents within the SARs with which no other laws and normative documents in the SARs should contradict; with respect to the function, the Basic Laws function to certain extent as the constitution in that they prescribe some constitutional contents such as the political system of the SARs and the basic rights and obligations of the residents; therefore, the Basic Laws can be duly regarded as the constitutional documents.

The above analysis illustrates the relationship between the Basic Laws and the Constitution from the perspective of legal source and nature, which helps us to have further in-depth understanding of the ultimate authority in the SARs.

## II. The Constitution and the SARs

Apparently, the relationship between the Constitution and the SARs is embodied in Article 31 of the Constitution which provides the constitutionality of the establishment of the SARs. However, during the drafting of the Hong Kong Basic Law before the formal establishment of the Hong Kong SAR, it was proposed that Article 31 of the Constitution is in contradiction with the Preamble, Article 1 and 5 of the Constitution, they are different from each other like chalk from cheese which cannot coexist, and thus, the Constitution shall not be applied in the SARs.<sup>5</sup> Since then, there have been heated discussions on the applicability of the Constitution in the SARs, and no prevailing view has been agreed on officially and among the academics. Besides the view that the Constitution does not apply in the SARs, there are also two other views which are representative: one view holds that no other articles except Article 31 applied in the SARs while the other view holds that the Constitution applies generally in the SARs, but not all provisions are applicable, the provisions relating to the affairs within the autonomy of the SARs are generally not applicable in the SARs.

The applicability of the Constitution in the SARs has become a difficult issue in the practice of the “One Country, Two Systems”, the major reason for which is the contradiction socialist nature of the Constitution and the capitalist system practiced in the SARs. Such ideological difference makes this theoretical problem of constitutional jurisprudence more complicated. Furthermore, the applicability of the Constitution is a difficult issue which has confused the scholars of constitutional jurisprudence for a long time; such issue is related to the current framework of Chinese constitutionalism. Thus, it is even more difficult to discuss the applicability of the Constitution in the SARs under the “One Country, Two Systems” policy. Therefore, the author tries to clarify this issue on the basis of the constitutional jurisprudence in combination with the realistic arrangement of the Chinese constitutionalism and the “One Country, Two Systems” policy.

A concept which goes hand in hand with the applicability of the Constitution is the force of

the Constitution. The force of law refers to the binding effect of the legal norm and the scope of its effect. The law has binding effect within certain scope once it takes effect, which is the prerequisite for the applicability of law; and the application of law is a means to realize the force of law. Nevertheless, "force" and "application" cannot be confused: "force" is an abstract state of existence while the applicability refers to a concrete conduct. As a conduct, application does not occur continuously, but it can occur at any time once there is "force". What is more important is that "force" is a state due to the nature of the law itself which occurs through legal procedure while application, as a conduct, depends on a subject which acts. So, when we talk about "application", we must discuss the subject who applies the law since there is no application without the subject who applies. Therefore, there are strict restrictions concerning the subject who applies the Constitution, only organs with public powers are entitled to applying constitution. The application of the Constitution is a functional activity of specific authority with public powers since the Constitution and administrative laws both aim at regulating and restricting public powers so as to safeguard the inviolability of private rights and freedom which is the original purpose of the Constitution. However, the above views that the Constitution does not apply in the SARs, that only Article 31 applies and that the Constitution applies generally in the SARs all fail to point out the subject which applies the Constitution in the SARs, and have, to a great extent, confused the issue of "force" and the issue of "applicability".

## **2.1 The force of the Constitution in the SARs**

The author is of the view that the entire Constitution has force in the SARs, that is, the entire Constitution has binding effect on the SARs. Such view is based on the following grounds:

Firstly, the Constitution represents the will of people's sovereignty, and is the form of the supreme law under the only sovereignty of a state with unitary state structure. It is impossible to confirm legally the resumption of sovereignty over Hong Kong and Macao without the recognition of the legal force of the Constitution in the SARs. If the force of the Constitution could not reach the SARs after the return of Hong Kong and Macao to motherland, which means that there exists a vacuum with respect to the force of the Constitution in certain territory within the state with unitary structure, the status of the Basic Laws of the SARs would be elevated potentially to the status of the Constitution. It has been illustrated above that the Basic Laws cannot be called "mini-constitutions" and the Basic Laws also have essential distinction from the state constitutions in federal countries. "Federalism implies the share of sovereignty between the governments of two levels and between the central and the borderland."<sup>6</sup> The elevation of the status of the Basic Laws to the status of the Constitution is in reality the challenge to the unitary sovereignty of PRC.

Secondly, by saying that the Constitution has force in the SARs, we mean that the entire provisions of the Constitution have force in the SARs in general. The view that only Article 31 of the Constitution has force in the SARs actually regards Article 31 as the proviso to the entire Constitution. Such a view is in essence a negation of the force of the Constitution in the SARs because the proviso in a legal provision means "one of both alternatives". Take Article 41.1 as an illustration which provides: Citizens of the PRC have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. There is a proviso in this provision that fabrication or distortion of facts with the intention of libel or frame-up is prohibited. Such provision can be understood according to its inherent logic to mean: Citizens of the PRC have the right to criticize and make suggestions to any state organ or functionary under the condition that they do not fabricate nor distort facts with the intention of libel or frame-up; however, they cannot exercise such rights once they fabricate or distort facts with the intention of libel or frame-up. That is to say, the proviso cannot coexist with

the rest of the provision. In fact, without other provisions of the Constitution, Article 31 alone will become empty. For example, without other provisions of the Constitution, we do not know what the “State” in Article 31 is. What kind of social system is practiced in such “state” which “may establish special administrative regions when necessary”? Who leads such state? If the rest provisions of the Constitution did not have force in the SARs, the actual contents of such provisions were also not binding on the SARs, and the “State” provided in Article 31 would lose its identification. For another example, Article 31 further provides that “the systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in the light of the specific conditions.” The nature of the NPC as legislature also originates from the provisions of the Constitution; if we do not recognize the force of such related provisions in the SARs we simply deny the legal ground for the legislative body which enacts the Basic Laws. Therefore, the inherent contradiction of such view is more apparent than the underlying contradiction between the “socialist constitution” and “capitalist special administrative regions”.

Of course, the entire Constitution having the force in the SARs does not mean that every parts of the Constitution have the same force in the SARs without distinction. There are five parts of the Constitution including the Preamble, Chapter 1 General Principles, Chapter 2 The Fundamental Rights and Duties of Citizens, Chapter 3 The Structure of the State and Chapter 4 The National Flag, the National Emblem and the Capital. Generally speaking, the force which these five parts have in the SARs can be classified into two types: direct force and indirect force.

### **2.1.1 Direct force**

The direct force of the Constitution in the SARs means that specific parts of the Constitution has the same force in the SARs as in the mainland, and as local administrative regions within the unitary state structure, the SARs are directly bound by such parts of the Constitution as is mainland. Such parts include certain part of the Preamble, certain provisions of Chapter 1, Chapter 3 and Chapter 4.

The statement about the Chinese modern history and the Chinese diplomatic policies and the provisions about the status and force of the Constitution in the Preamble have direct force in the SARs because the Chinese modern history is the history of the Chinese nation including Hong Kong and Macao, and it is also an important reason for the colonization of Hong Kong and Macao by the western colonizers. Since the PRC is the only representative of Chinese sovereignty, the SARs should follow the state diplomatic policies as the local administrative regions, and should also recognize the supreme status and ultimate force of the Constitution.

With respect to Chapter 1 of the Constitution, the statement in Article 2 that all power in the PRC belongs to the people, the statement in Article 29 that the armed forces of the PRC belong to the people and the statement in Article 31 that the state may establish SARs when necessary all have direct force in the SARs. This is because the SARs are an integrated part of the PRC, and the residents of the SARs cannot be excluded from the scope of “people”. The Central Government is responsible for the defense of the SARs, and the Chinese Liberation Army stationed in Hong Kong and Macao as the national armed forced are also “people” in nature and have the same force in the SARs; the economic, commercial, social and cultural exchange between the SARs and the mainland are also based on the administrative division provided in Article 30 of the Constitution. The reason for the direct force of Article 31 in the SARs is too obvious to be further illustrated.

The entire Chapter 3 and 4 all have direct force in the SARs. The reasons include: the state structure provided in the Constitution is also the state structure of the PRC to which the SARs belong, the “Central Government” which has direct relationship with the SARs apparently refers to the state organs such as the NPC and its standing committee and the Central People’s Government as provided in Chapter 3, and the National Flag, National Emblem, and National Anthem all apply in the SARs, and Beijing is also the capital of the PRC to which the SARs belong.

### **2.1.2 Indirect force**

The indirect force of the Constitution in the SARs means that the Basic Laws prevail over the specific parts of the Constitution and have direct force in the SARs according to the theory that special constitutional principles prevail over general constitutional principles, and such parts of the Constitution need not realize their force in the SARs by constituting specific legal relationships. Such parts include certain parts of the Preamble and Chapter 1 and Chapter 2.

The rest of the Preamble except the above-mentioned parts which have direct force in the SARs, the rest of Chapter 1 except the above-mentioned parts which have direct force in the SARs and the entire Chapter 2 all have indirect force in the SARs.

The common feature such parts share is that all such provisions need not be carried out in the SARs by constituting specific legal relationship with the SARs or with the residents of the SARs. However, the SARs and their residents should respect in the form of omission of act, and should not interfere with the implementation of such relevant provisions of the Constitution in Mainland. For example, the Preamble and the state structure, political system, economic, social, legal and cultural system established by Chapter 1 will not be implemented in the SARs which are established according to the special constitutional principles of "One Country, Two Systems", "Hong Kong people ruling Hong Kong", "Macao people ruling Macao" and a high degree autonomy due to their socialist nature, and the political, economic, social, legal and cultural system of the SARs should be established according to the relevant provisions of the Basic Laws. Nevertheless, the SARs must respect and shall not interfere with the socialist system practiced in mainland. Similarly, according to the theory that special constitutional principles prevail over general constitutional principle, Chapter 3 (Fundamental Rights and Duties of the Residents) of the Basic Laws should be implemented in the SARs in substitution of Chapter 2 of the Constitution (Fundamental Rights and Duties of the Citizens) because it is impossible for the same group of people to enjoy and bear two different sets of rights and duties; nevertheless, the residents of the SARs must respect and shall not interfere with the enjoyment of relevant rights and performance of relevant duties by the Chinese citizens in Mainland as prescribed in Chapter 2 of the Constitution. Such compatible parallelism of these two systems is very significant, that is, the principle of "Two Systems" are dialectical as argued by Deng Xiaoping – the "two systems" should be established on the basis of the coexistence of both systems, the failure to keep either system will lead to the extinction of the "two systems".

## **2.2 The applicability of the Constitution in the SARs**

The major subject to apply the Constitution is the NPC and its standing committee. Besides, the chairman, State Council and the Central Military Commission all have partial power to apply the Constitution. With respect to the application of the Constitution by the Chinese judicial organs, different people stick to their different viewpoints. According to the judicial practice of the first case of constitutional judicialisation "The Case of Qi Yuling", many scholars are of the view that the judicial organs have the power to apply the Constitution in exercising adjudicating powers. However, it was also pointed out by some scholars that "the Case of Qi Yuling" is litigation between private individuals and "it is not proper to regard the constitutional provisions as direct ground for adjudication, and the Constitution is thus regarded as an all-embracing law above normal public and private laws".<sup>7</sup> Still, some scholars strongly believe that "the judicial organs have no power to apply the Constitution at all according to the Chinese Constitution, therefore, there might exist such a term of 'judicial application of the Constitution' in the constitutional jurisprudence in China, no reality of legitimate constitutional "judicial application of the Constitution" actually exist.<sup>8</sup> The author is for the later two viewpoints because the judicial organs must have power to interpret the Constitution if they are to apply the Constitution, however, the Constitution only explicitly vests the power to interpret the Constitution in the Standing Committee

of the NPC and no judicial organs are given the power to interpret the Constitution.

Nevertheless, whether the Chinese judicial organs are the constitutional subject to apply the Constitution does not relate to the judicial application of the Constitution in the SARs because the legal relationship the Constitution regulates is that between citizens and the government and government institutions. Since the SARs practice a high degree of autonomy and enjoy the final adjudicating power, the residents in the SARs will not have direct relationship with the state organs with public powers within the SARs and the relevant issues will not be sued to the judicial organs in the Mainland China. Will there be disputes between the organs with public powers in the SARs and the state organs with public powers? Theoretically, the answer is yes. However, we cannot forget the principle of “no review of state conducts and political issues”<sup>9</sup> – the judicial organs have no jurisdiction over “state conducts and political issues”. The state conducts and political issues under the “One Country, Two Systems” policy mainly include various powers the Central Government exercises over the SARs such as appointing Chief Executives by the Central Government, appointing principle officials of the SARs Governments according to the nomination of the Chief Executives, special permission by the Central Government to allow the entry of foreign military vessels into Hong Kong and Macao, the amendment of the Basic Laws by the NPC and the interpretation of the Basic Laws and adding to or deleting from the national laws listed in Annex 3 by the Standing Committee of the NPC.<sup>10</sup>

At present, there are three forms of application of the Constitution in the SARs:

(1) Legislative application. It refers to the activities of making laws and regulations according to the legal authorization and procedures by the state legislature or the delegated legal bodies in accordance with the Constitution.<sup>11</sup> With respect to the SARs, the NPC makes the Basic Laws according to Article 31 of the Constitution, which is the complete representation of legislative application of the Constitution. The amendment of the Basic Laws according to the procedure by the NPC is also the legislative application of the Constitution.

(2) Supervising application. The supervising application of the Constitution in the context of Mainland China refers to the system of supervising application of the Constitution with the NPC and its Standing Committee as the center which deal with the review of constitutionality of the laws, administrative regulations, autonomous regulations, separate regulations, local regulations and other normative documents such as judicial interpretations and ordinances of the departments.<sup>12</sup> The respective review of the constitutionality of the two Basic Laws by the NPC on the day when they were enacted is the typical supervising application. Moreover, the Standing Committee of the NPC shall not contravene the Constitution and the constitutional principles in exercising the power of interpreting the Basic Laws.

(3) Executive application. The executive application of the Constitution refers to the activities of making normative documents according to the authorization of the Constitution and other specific activities of executive administration by the state executives.<sup>13</sup> This is still possible although comparatively rare in the SARs where the high degree of autonomy is practiced. For example, Article 20 of the Basic Laws provides: the SAR may enjoy other powers granted to it by the NPC, the Standing Committee of the NPC or the Central Government. Here, in granting “other powers” to the SARs by abstract administrative conduct or specific administrative conduct, the Central Government, as the highest state executive organ, relies on the Constitution as the legal basis for its administrative conduct.

From the above three forms of application, we could see that the subject to apply the Constitution in the SARs should be the supreme state legislature – the NPC and its Standing Committee, and the highest state executive organ – the State Council. With respect to the executive and legislative organs in the SARs, they are only involved in the legislative and executive application of the Basic Laws based on the special constitutional principles such as “One Country, Two Systems”, “Hong Kong people ruling Hong Kong”, “Macao people ruling Macao” and a high

degree of autonomy. In addition, the courts in the SARs are only responsible for the supervising application of the Basic Laws. In a word, the organs with public powers in the SARs need not and cannot circumvent the Basic Laws and have direct legislative, executive and supervising application of the Constitution.

With respect to the judicial application of the Constitution, the courts in the SARs can have "indirect judicial application" of the Constitution although there is no constitutional judicial application of the Constitution by the judiciary in the Mainland China. The indirect judicial application of the Constitution refers to the interpretation of the Basic Laws by citing the Constitution by the courts in the SARs in hearing cases. One typical example of such indirect judicial application is the No. 28/2006 Decision made by the Court of Final Appeal in the Macao SAR on 18<sup>th</sup> July 2007 regarding the enacting of administrative rules and regulations by the Chief Executive.<sup>14</sup> The Court of Final Appeal decided that the Chief Executive did not violate the Macao Basic Law by enacting administrative rules and regulations vacating the decisions made by the Court of Second Instance and the Administrative Court on the relevant 4 cases<sup>15</sup>, and the Constitution was cited as ground for such decision by the Court of the Final Appeal which held that the Constitution is the legislative basis of the Macao Basic Law, and the concept of administrative rules and regulations originates from the Constitution and the "State Council may enact administrative rules and regulations which create rights and obligation in order to perform the function granted by Article 89 of the Constitution or specially delegated by the National People's Congress and its Standing Committee".<sup>16</sup> So, in judicial interpretation of the Basic Laws and in reviewing the compliance of the other normative documents and administrative conducts in the SARs with the Basic Laws, the courts in the SARs may duly cite the Constitution on the basis that the Constitution is the legal ground for the enactment of the Basic Laws so as to probe into the original legislative intention of the Basic Laws.

It is therefore clarified that the subject of the legislative, supervising and executive application of the Constitution in the SARs is the NPC and its Standing Committee and the State Council while the indirect judicial application of the Constitution in the SARs should be conducted by the courts in the SARs. Both the direct application by the NPC and its Standing Committee and the State Council and the indirect application by the courts in the SARs are restricted to the parts of the Constitution which have direct force in the SARs, and the parts which have indirect force in the SARs are not included within the scope of the application of the Constitution in the SARs.

Through the analysis of the force and application of the Constitution in the SARs, it is sufficiently indicated that the Basic Laws are not the ultimate authoritative legal document even though they are the authoritative legal document in the SARs, and the legal document with ultimate authority in the SARs can only be the Constitution.

## Notes:

- <sup>1</sup> The Sino-British Joint Declaration was signed on 19<sup>th</sup> December 1984 in Beijing; while the Sino-Portuguese Joint Declaration was signed on 13<sup>th</sup> April 1987 in Beijing.
- <sup>2</sup> Kelsen, H. (1996). *General Theory of Law and State*. (Chinese version translated by Shen Zongling). Beijing: The Encyclopedia of China Publishing House. 149.
- <sup>3</sup> Holland, T. E. (1927). *The Elements of Jurisprudences (13<sup>th</sup> Edition)*. Clarendon: Oxford. Chapter 5.
- <sup>4</sup> Rao Geping (2009). The Policy of "One Country, Two Systems" and the Implementation of the Constitution in Hong Kong and Macao. In Rao Geping and Jeong Wan Chong (Eds.). *Successful Ten Years: Essay Collection of the Academic Symposium on the Practice of "One Country, Two Systems in Macao"*. Macao: Associação de Divulgação da Lei Básica de Macau. 14.



- <sup>5</sup> See *The Relationship between the Basic Law and the Constitution (Final Report)* written by Special Group on the Relation between Central Government and the SAR of Consulting Commission of the Hong Kong Basic Law in 1987.
- <sup>6</sup> Heywood, A. (2009). *Political Theory: an Introduction (3<sup>rd</sup> Edition)*. (Chinese version translated by Li Zhi). Beijing: Renmin University of China Press. 107.
- <sup>7</sup> Zhang Qianfan (2004). On the Demarcation of Legal Effects of the Constitution and Its Influence Over Private Law. *Journal of Comparative Law*. Volume 2.
- <sup>8</sup> Tong Zhiwei (2008). Constitution's Application should Follows the Road Stipulated by Constitution Itself. *China Legal Science*. Volume 6.
- <sup>9</sup> Wang Yu (2008). *Authorization and Autonomy*. Macao: Associação de Estudos Jurídico de Hou Kong. 74.
- <sup>10</sup> *Ibid.*, 73.
- <sup>11</sup> Liu Guo (2005). A Trio of Constitutionalism: Contrast and Analysis of Three Models of the Application of Constitution. *Gansu Theory Research*. Volume 6.
- <sup>12</sup> Wang Yu (2008). *Authorization and Autonomy*. Macao: Associação de Estudos Jurídico de Hou Kong. 74.
- <sup>13</sup> *Ibid.*
- <sup>14</sup> Court of Final Appeal of the Macao SAR (2008). *The Annual Judicial Report of the Courts of the Macao Special Administrative Region 2006-2007*. Macao: President's Office of the Court of Final Appeal of Macao. 2008.
- <sup>15</sup> The respective decisions are Decision No. 223/2005, Decision No. 280/2005 and Decision No. 48/2006 made by the Court of Second Instance of the Macao SAR and Decision No. 38/05-EF made by the Administrative Court of the Macao SAR.
- <sup>16</sup> Lok Wai Kin (2008). Comments and Analysis on the Methods of Interpreting the Basic Law of Macao Special Administrative Region. Paper submitted to the Academic Symposium on the Development of Laws in the Mainland, Taiwan, Macao and Hong Kong, held by the Law School of Hong Kong University, Hong Kong.