

論自治規章與其他成文法源之區別

On the Differences between Bylaws and other Statutory Laws

許春鎮(Chun-Chen Hsu)

中文摘要

自 1999 年地方制度法公布施行以來，我國的自治行政日漸發達，而自治行政主體最重要的活動之一，即為制定自治規章。

除自治規章外，成文法之法源尚有憲法、法律、法規命令、行政規則及議事規則等。關於自治規章與此等成文法源之區別，國內文獻少有論及。按法源體系，各種法源之性質不同，規範標的互異，自有嚴加區別之必要。尤其在我國，動輒以「地方立法權」稱呼地方自治規章之制定，混淆規範體系。

本文擬從法理觀點，並參酌德國學說與法制，探討自治規章的性質及其與各種成文法源之異同，希望能藉此釐清各種成文法源彼此間的概念區別，並填補文獻上之空白。

關鍵詞：自治規章、自治條例、法律保留、形式意義法律、法規命令、行政規則、議事規則、釋字第 738 號、第 806 號解釋、民主正當性、授權明確原則、公立大學、自治條例保留

Abstract

Since the promulgation and implementation of the Local Government Act in 1999, the local self-administration in our country has become increasingly developed. One of the most important activities of the local self-governing bodies is the formulation of bylaws.

In addition to bylaws, the sources of statutory law include the constitution, formal laws, statutory orders, regulation orders and rules of procedure. The differences between bylaws and the other statutory laws are rarely discussed in domestic literature. In the legal source system, various legal sources have different natures and different normative subjects, so it is necessary to strictly distinguish them. Especially in our country, the formulation of local bylaws is often referred to as "local legislative power", which confuses the normative system.

This article intends to explore the nature of bylaws and their similarities and differences with various statutory laws from the viewpoint of Jurisprudence, with reference to German doctrine and legal system, hoping to clarify the conceptual differences between various statutory laws. In addition, this article hopes to fill the gaps in the literature.

Keywords: bylaws, self-government ordinances, legal reservation, formal laws, statutory orders, regulation orders, rules of procedure, Justice Interpretation No. 738, Justice Interpretation No. 806, democracy legitimation, requirement of clarity and definiteness