

The Local Governments' Legislative Authority of “Cities Divided into Districts” in China :New Trend of the Constitutional Amendment in 2018

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This article considers the significance of local governments' legislative authority in China, given by the constitutional amendment in 2018, focusing newly established Article 100 Para. 2 of Chinese Constitution and tracing back to the beginning of decentralization. First, We identify the root of Article 100 Para. 2 as the Article 72 of the Legislation Law established by its amendment of 2015, as its significance is still not evaluated yet. Second, We review the developments of decentralization in China, especially the legislative history of devolution to the local governments since “reform and opening-up” policy, to point out that the local legislative power is gradually extended to lower tier of local governments. Third, We assess the constitutional positioning of the Article 72 of the Legislation Law. It gives the local legislative authority to “cities divided into districts”, however, Chinese Constitution had not provided the local legislative authority except provinces and central-government-ruled municipalities before 2018. Some constitutional scholars have evaluated it using the concept of “good unconstitutionality”, or others have argued it as “local governments' experiments, though the amendment of 2018 renders the need of these arguments. Then, We argue that the Article 100 should be regarded as the

effort of decentralization, but still has future agenda.