



Contemporary Chinese Legal System

Dr. Haihong Liu, SISU
Spring Semester, 2016-2017

Schedule

Week	Date	Topic
1	Feb 23	No Class
2	March 2	Topic 1: Chinese legal system in general-Chinese Legal Culture and Traditions
3	March 9	Topic 1 Chinese legal system in general - Experience of Law in PRC
4	March 16	Topic 2: Chinese Constitutional Law & Rule of Law-Chinese Constitution
5	March 23	Topic 2: Chinese Constitutional Law & Rule of Law-Legal Institutions and the Administration of Justice and Law
6	March 30	Topic 2: Chinese Constitutional Law & Rule of Law-Sources of Law and Law-making
7	April 6	Topic 3: Chinese laws in operation-public law
8	April 13	Topic 3: Chinese laws in operation- civil law
9	April 20	Topic 3: Chinese laws in operation-Business law
10	April 27	Topic 3: Chinese laws in operation-Foreign Trade & Investment law
11	May 4	Internship: Visit the legal department of a multinational company in Shanghai (The time may be changed)
12	May 11	Topic 4: Dispute Resolutions
13	May 18	Topic 5-Implementation and Enforcement of Law

Topics to be covered

I. State Governance Structure

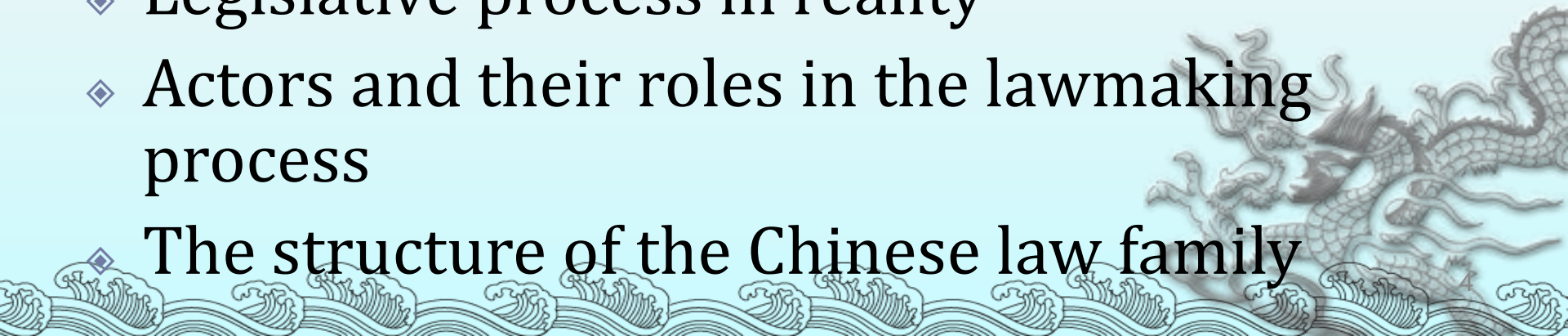
General Structure

Major Institutions



Topics to be covered

- ◆ The lawmaking and interpretation of law in China
- ◆ Conflicts-solving on legislative power demarcation
- ◆ Hierarchy of legal norms
- ◆ Legislative process as provided in law
- ◆ Legislative process in reality
- ◆ Actors and their roles in the lawmaking process
- ◆ The structure of the Chinese law family



Topics to be covered in Session II

II. Case Study

Regulation of Demolition of Urban Houses in China

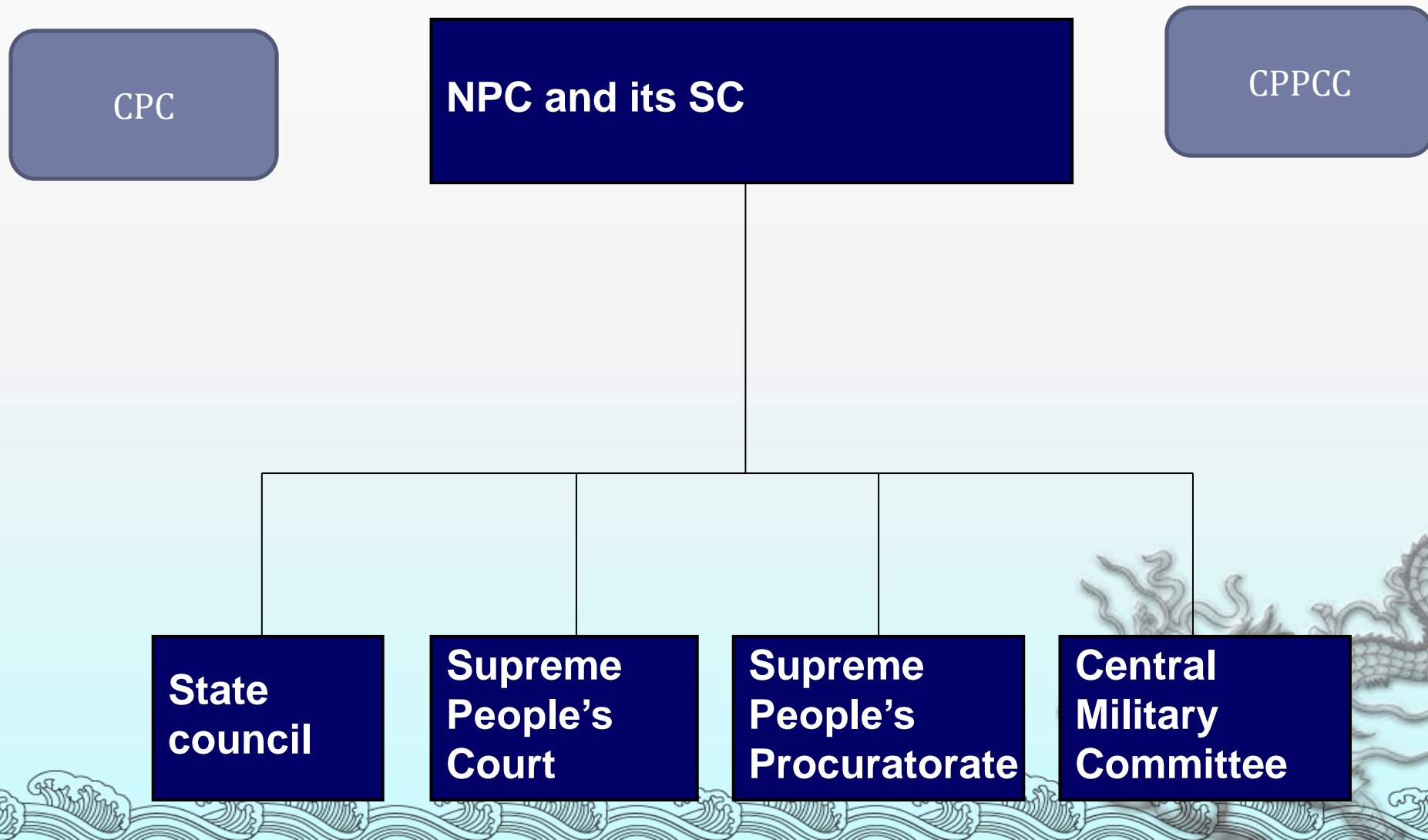


Four characteristics of socialist legal system

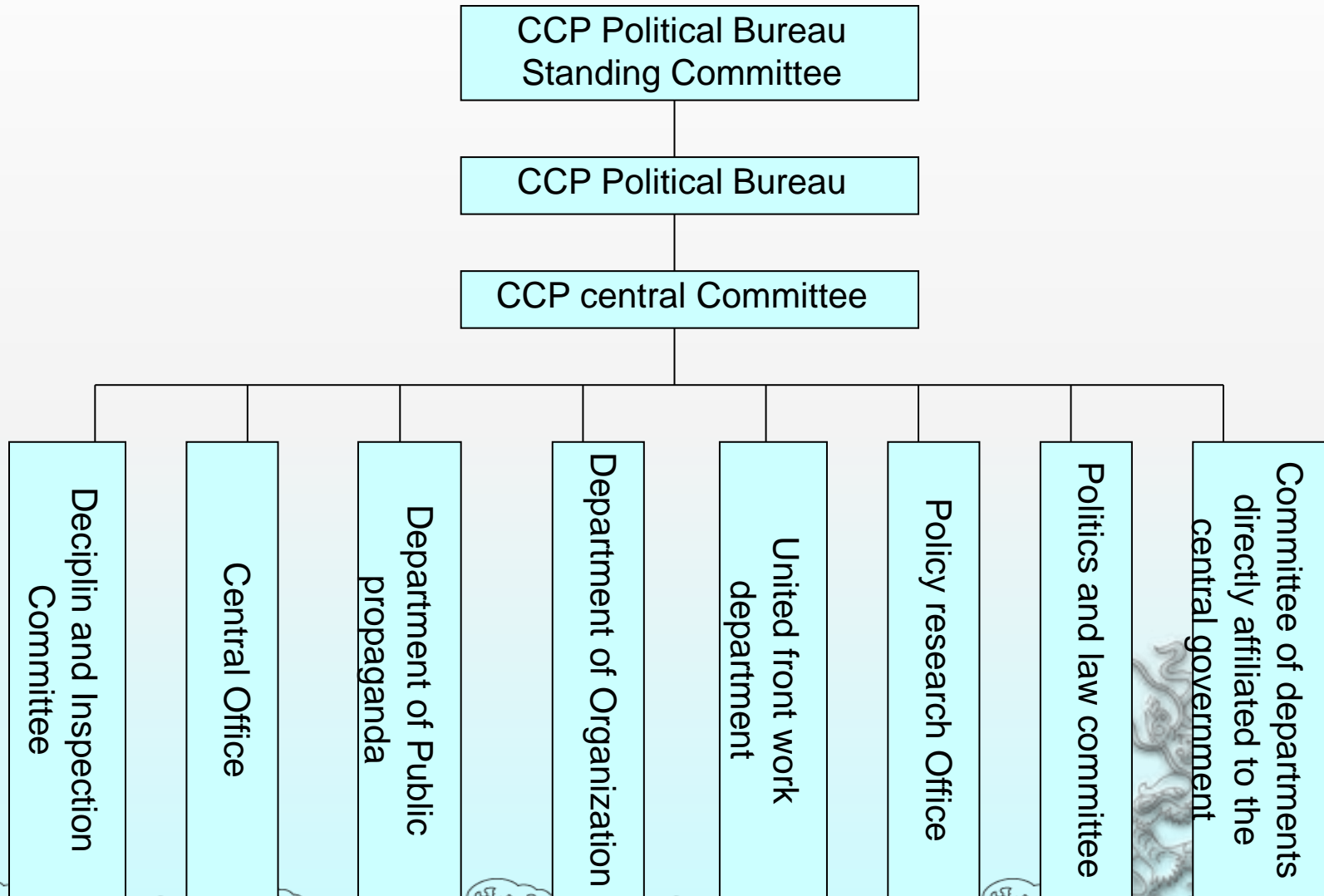
- ◆ Law must be made. (有法可依)
- ◆ Law must be obeyed. (有法必依)
- ◆ Law must be strictly enforced. (执法必严)
- ◆ Unlawful actions must corrected and punished. (违法必究)



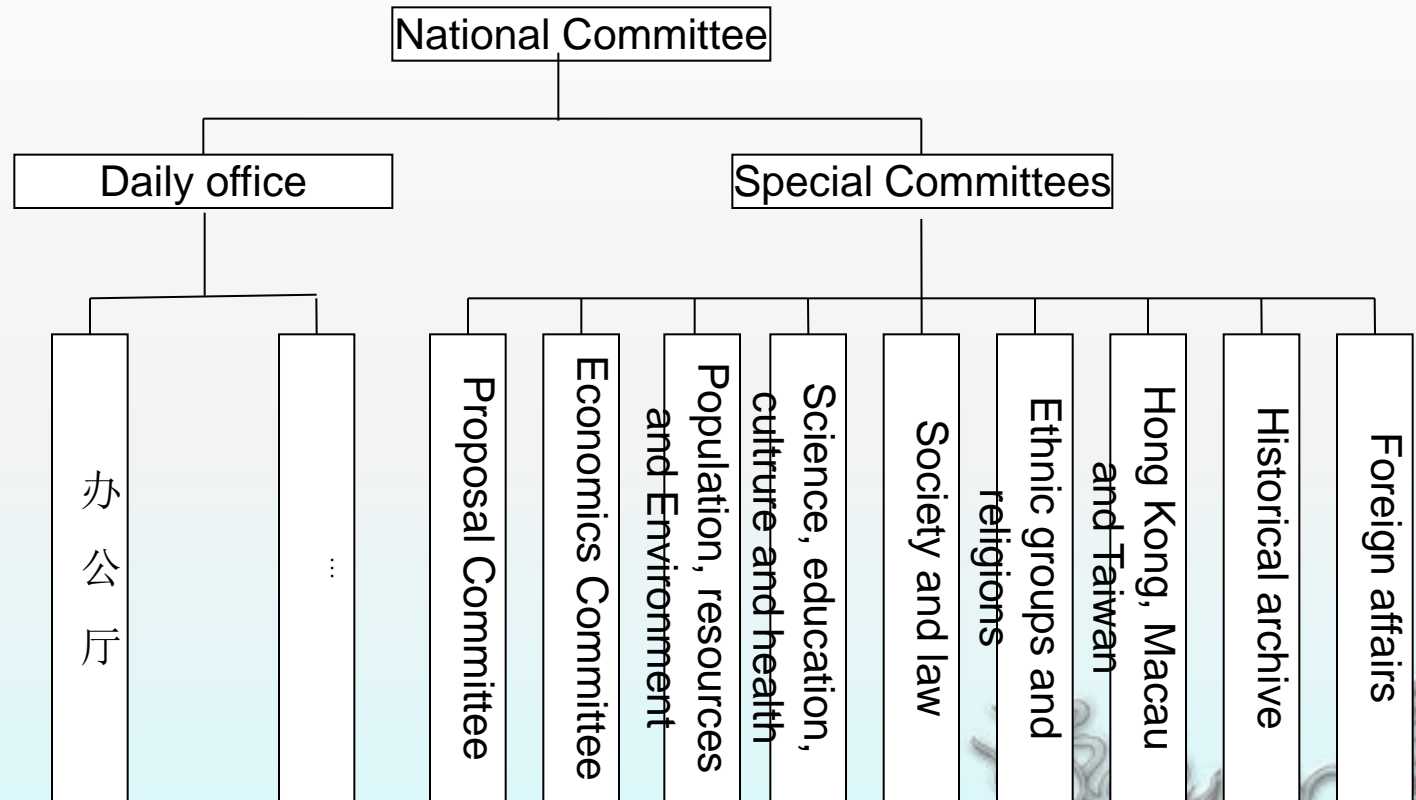
I State Governance Structure Under Constitution at state level



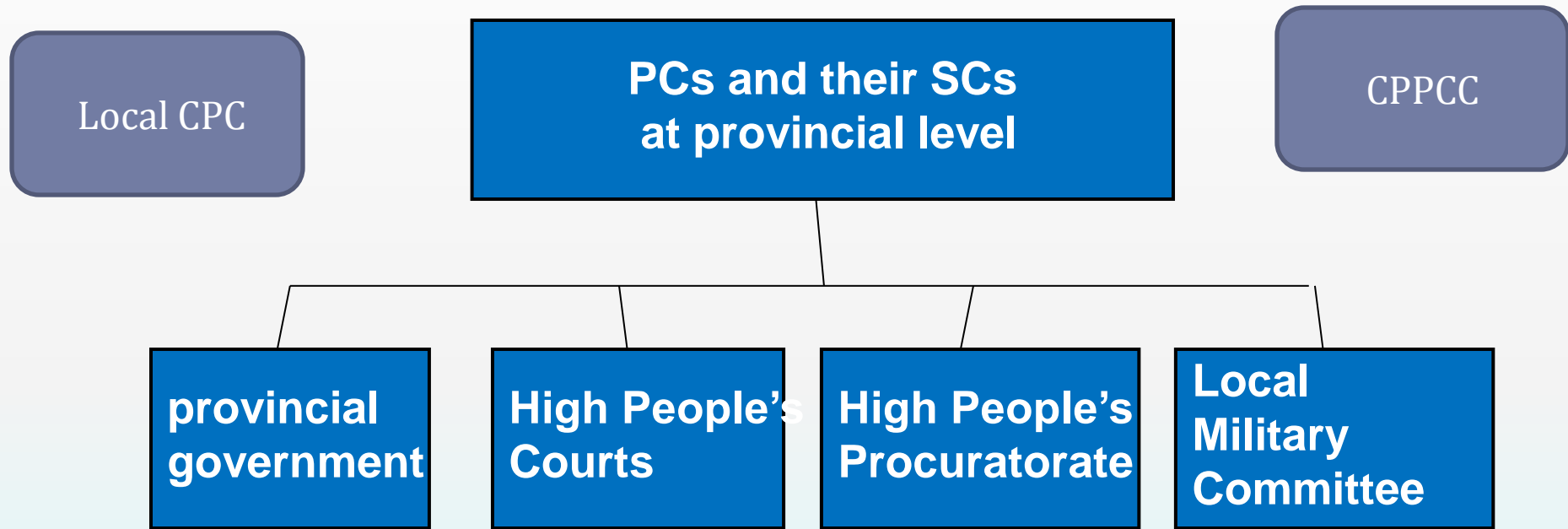
Chinese Communist Party Structure



Chinese People's Political Consultative Committee (CPPCC)



I State Governance Structure Under Constitution at local level (1)



I State Governance Structure Under Constitution at local level (2)

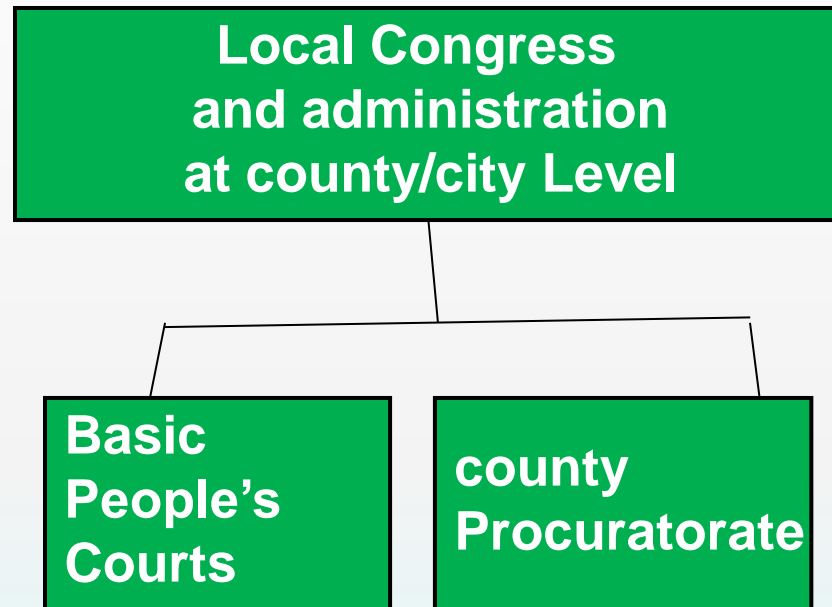
No PCs and administration
at Prefectural Level
(except at AR and Large cities)

Intermediate
People's
Courts

Branches of
Procuratorate



I State Governance Structure Under Constitution at local level (3)

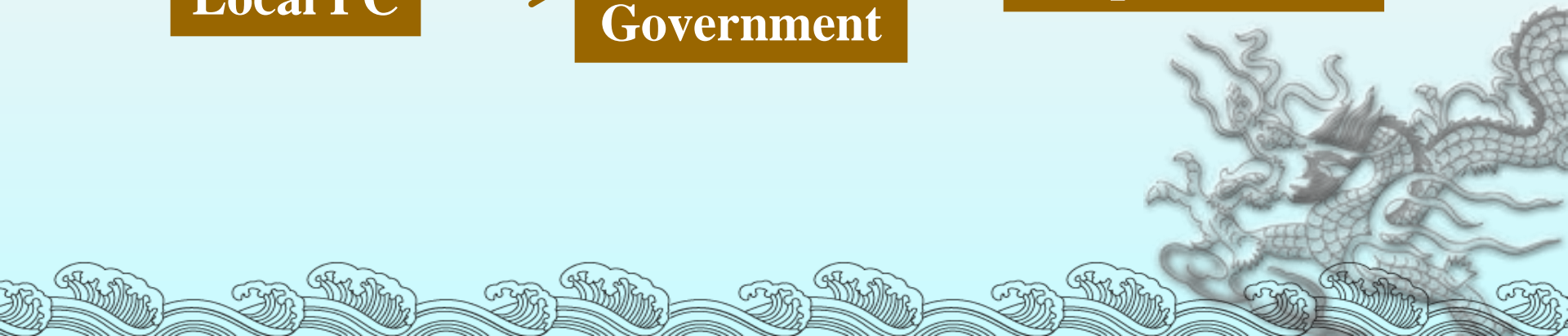
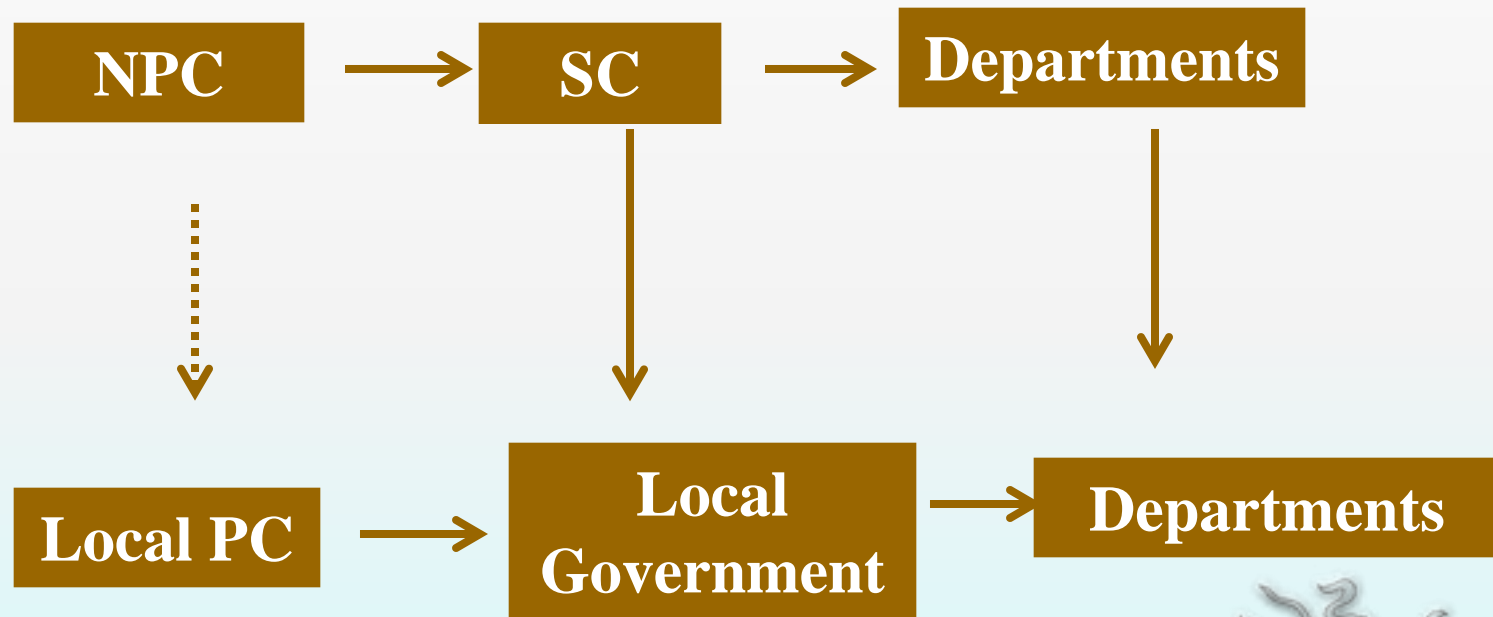


I State Governance Structure Under Constitution at local level (4)

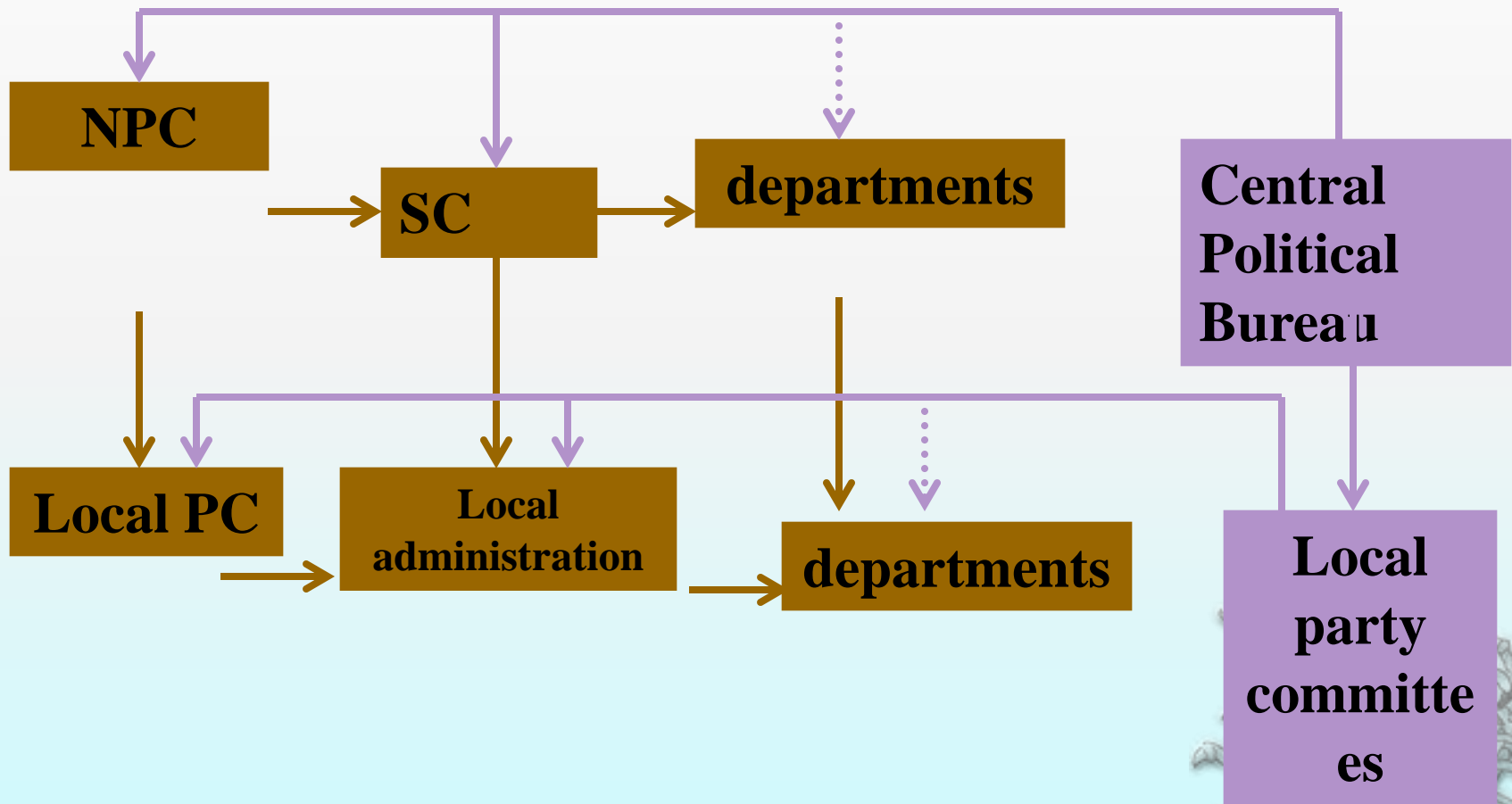
**Townships
& administrative village congresses**



1.2、 Relation between Legislature and Administration



1.3、 Relation between government and party



legislative power - NPC

- ◆ The highest organ of State power
- ◆ Around 3000 members
- ◆ Convene once a year
- ◆ Make Constitutional amendments, basic laws, laws and decisions



legislative power - NPC

Legislator	Chinese Term	English Term	Sources
NPC	修改宪法	Constitutional Amendments	Con. 62 Leg. 7
	基本法律	Basic Laws	
	决定	Decisions	

legislative power - NPCSC

- ◆ Standing organ of the NPC
- ◆ Around 150 members
- ◆ Meet once in two months
- ◆ Make and amend other laws which are not made by the NPC
- ◆ Interpret laws

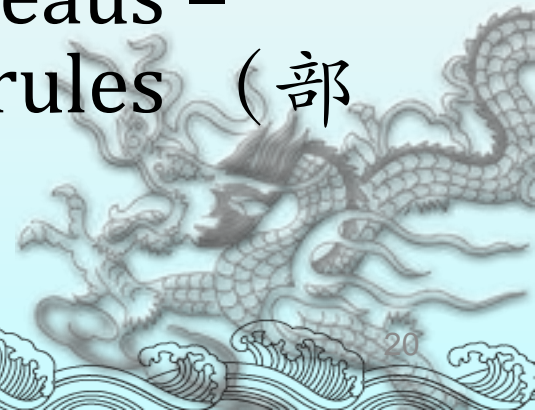


legislative power - NPCSC

Legislator	Chinese Term	English Term	Sources
NPCSC	法律	Laws	Con. 67 Leg. 7
	修改或补充法律	Law revisions	Con. 67 Leg. 7
	法律解释	Interpretation of the Con. and laws	Con. 67 Leg. 42

legislative power – State Council

- ◆ Highest administrative organ
- ◆ Executive organ of the NPC
- ◆ Have several ministries, commissions and bureaus
- ◆ SC - make administrative regulations (行政法规)
- ◆ Ministries, Commissions and Bureaus – make ministerial administrative rules (部委规章)

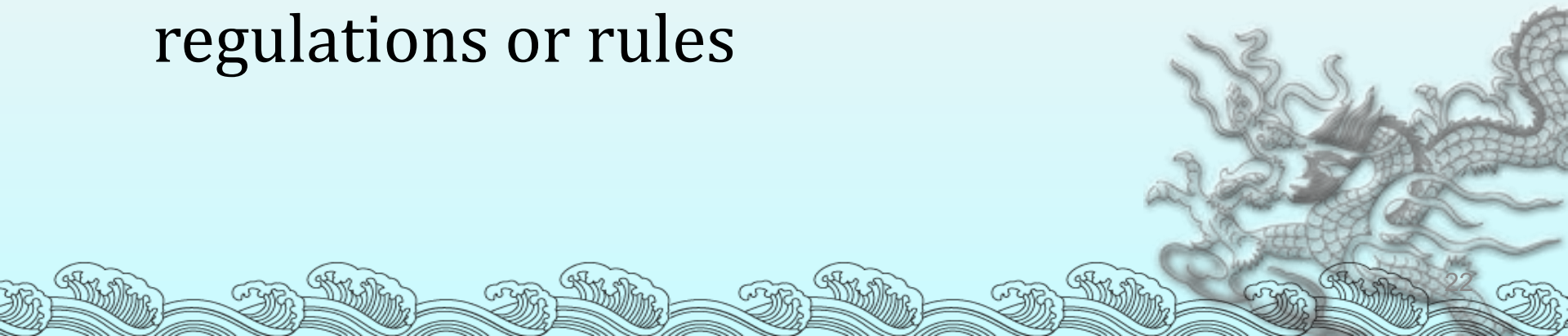


legislative power – State Council

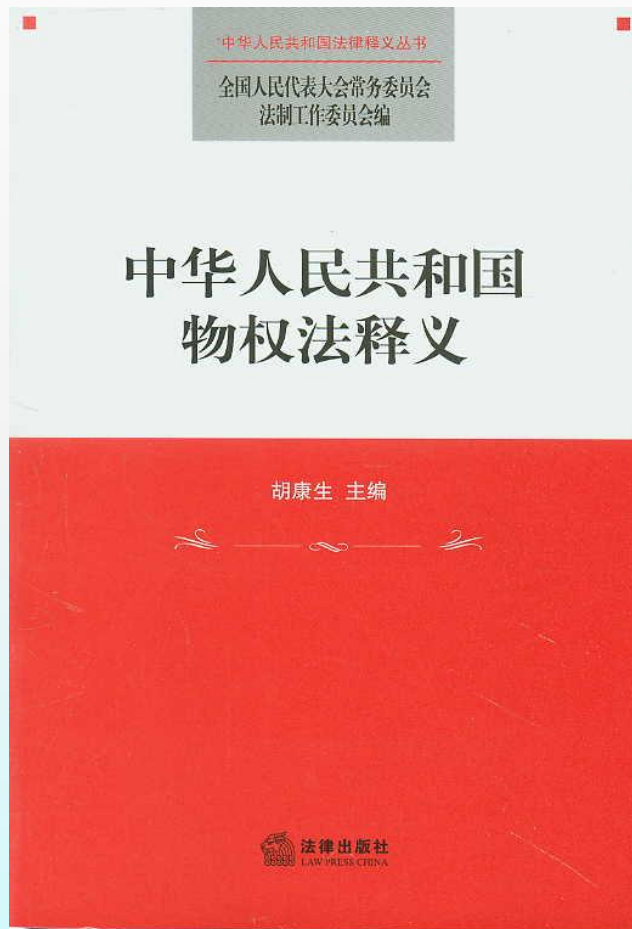
Legislator	Chinese Term	English Term	Sources
State Council	行政法规	Administrative regulations	Con. 89 Leg. 9, ch.3
Ministries, Commissions and Bureaus	部委规章	Ministerial administrative rules	Con. 90 Leg. 71, 72

legislative power – SPC and SPP

- ◆ Judicial Interpretation
- ◆ Named “circular”, “notifications”, “Explanations”, etc.
- ◆ Made either on a specific case or on a general issue
- ◆ Sometimes conflict with other laws, regulations or rules

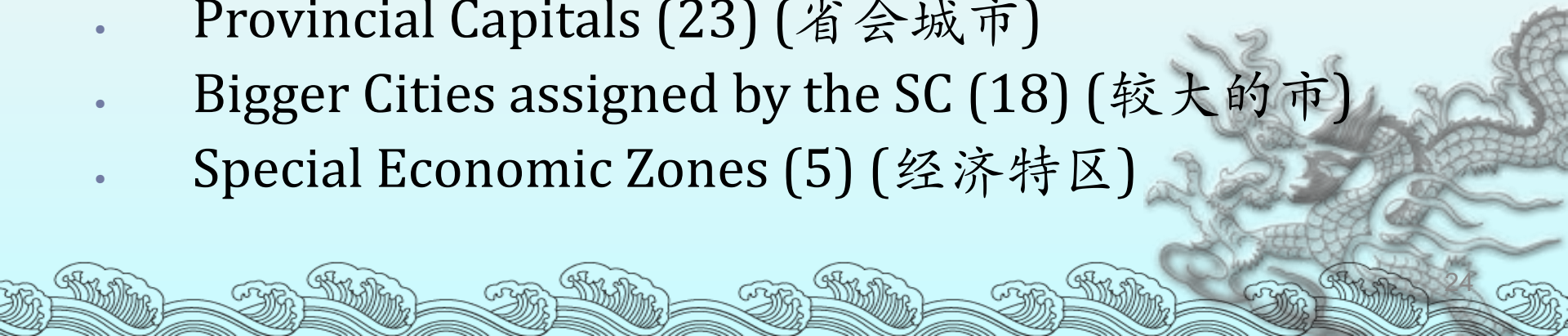


legislative power – students' dilemma



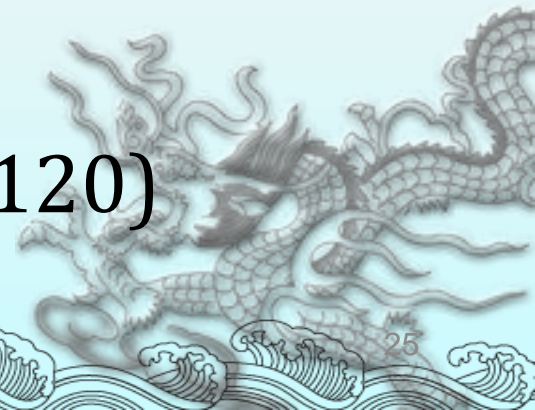
legislative power – normal local legislative power of LPCs and LPCSCs

- ◆ LPCs and LPCSCs of the following administrative areas have normal local legislative power and make local regulations:
 - Provinces (23) (省)
 - Ethnic Autonomous Regions (5) (自治区)
 - Municipalities directly under the Central Government (4) (直辖市)
 - Provincial Capitals (23) (省会城市)
 - Bigger Cities assigned by the SC (18) (较大的市)
 - Special Economic Zones (5) (经济特区)



autonomous legislative power of autonomous LPCs

- ◆ People's Congresses (Not Standing Committees thereof) in the following autonomous areas enjoy autonomous legislative power:
 - Autonomous regions (5)
 - Autonomous prefectures (30)
 - Autonomous counties/banners (120)



independent legislative power of SARs

- ◆ Hong Kong SAR
- ◆ Macau SAR



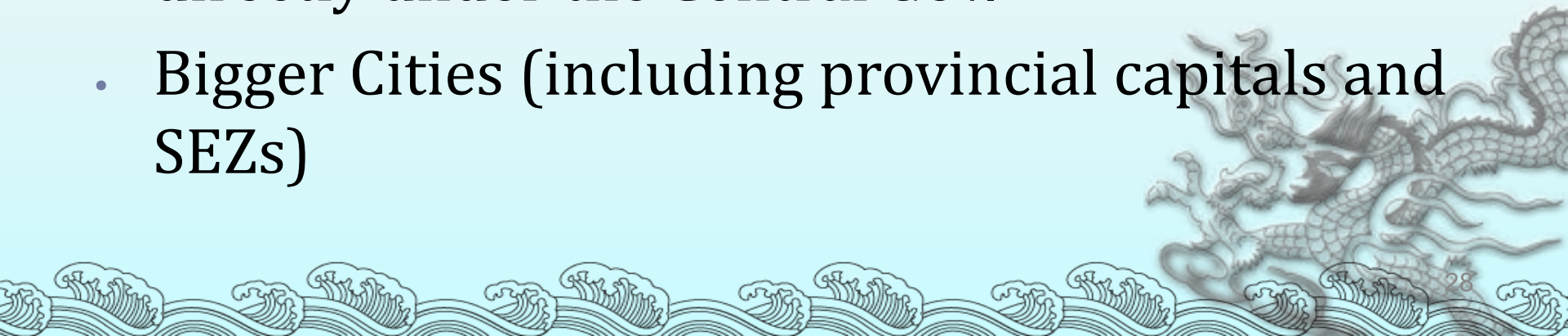
legislative power as authorized by NPC in SEZs

- ◆ Authorized by the NPC
- ◆ LPC and LPCSC of a province or a city where a SEZ locates
- ◆ Only implementable within the SEZ



local administrative rules

- ◆ People's governments of the following administrative areas shall make local administrative rules (Leg. 73):
 - provinces, autonomous regions, municipalities directly under the Central Gov.
 - Bigger Cities (including provincial capitals and SEZs)



Vertical legislative power demarcation: federalist system

- ◆ Bottom – up approach



Vertical legislative power demarcation: unitary or federalist?

- ◆ Federalism – a slogan in the old days
- ◆ Unitary system – the centre's willing to control
- ◆ A recent trend – decentralization



Vertical legislative power demarcation: two sets of enthusiasms

- ◆ Enthusiasms of the Central government and local governments
- ◆ Enthusiasms of the Han Chinese and minority ethnic groups



Vertical power demarcation: mechanisms for conflict resolution

- ◆ Political mechanism: the CCP's personnel control
- ◆ Legal mechanism: Legislative power demarcation and law review



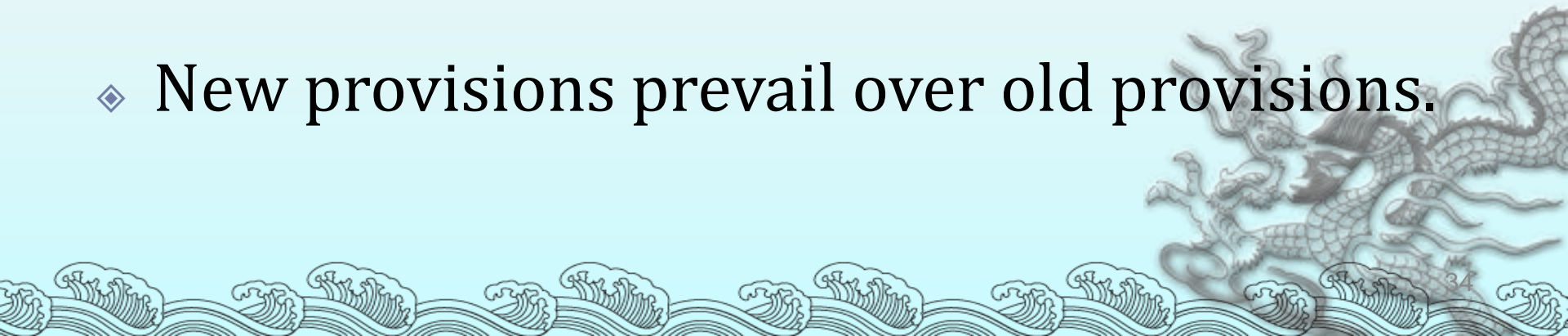
chart of legal norms

Constitution	
Laws	
Administrative regulations	
Ministerial administrative rules	Provincial regulations
	Provincial administrative rules
	Municipal regulations
	Municipal administrative rules

conflict resolution (1)

Legal norms enacted by the same body (LL83):

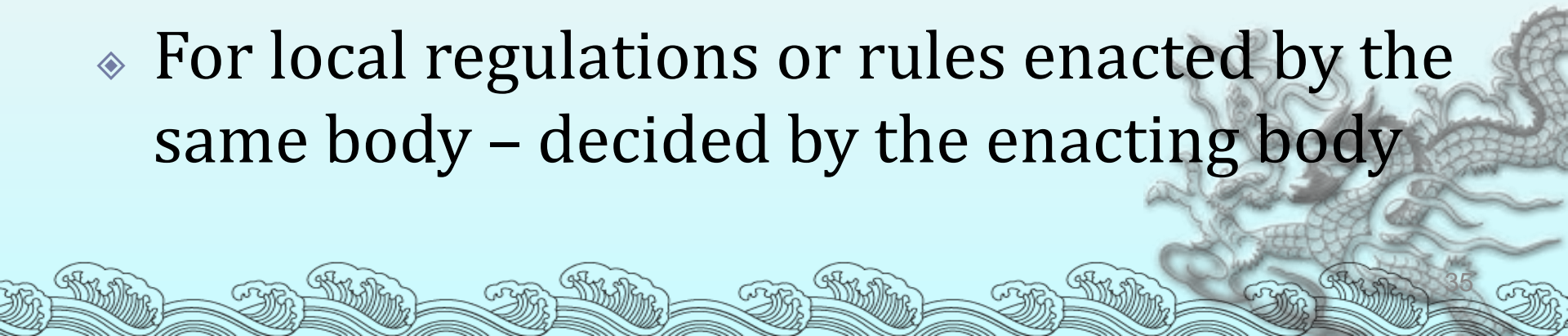
- ◆ Special provisions prevail over general provisions.
- ◆ New provisions prevail over old provisions.



conflict resolution (2)

New general provisions vs. old special provisions (LL85-86)

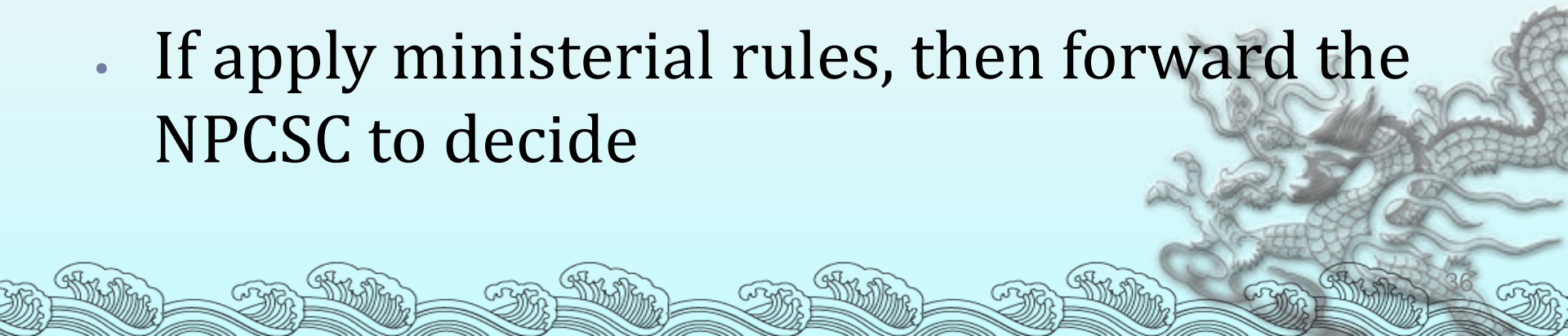
- ◆ For Law -- decided by the NCPSC
- ◆ For Administrative regulations – decided by the State Council
- ◆ For local regulations or rules enacted by the same body – decided by the enacting body



conflict resolution (3)

Ministerial administer rules vs. local regulations (LL86):

- ◆ State Council – give opinions
 - If apply local regulations, then apply local regulations
 - If apply ministerial rules, then forward the NPCSC to decide



conflict resolution (4)

- ◆ Ministerial rules vs. local administrative rules or ministerial rules vs. ministerial rules (LL86)

-- decided by the State Council



conflict resolution (5)

- ◆ Regulations enacted by authorization vs. a national law (LL86)

-- decided by the NPCSC



Legislation process in NPC/NPCSC

- ◆ Bill submission
- ◆ Consultation and deliberation
- ◆ Voting
- ◆ Approval and publication



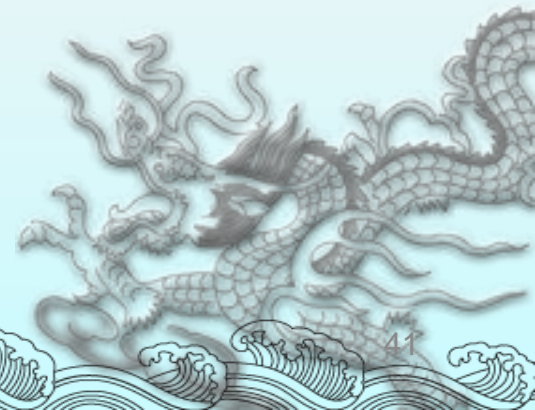
Actors and their roles: the CCP

- ◆ Intensive interference
- ◆ legalization of CCP's policies
- ◆ Personnel control of legislative bodies and other bodies



Actors and their roles: the people's deputies

- ◆ Theoretically: representatives of the people
- ◆ In reality:
 - Direct elections are restricted to the county and township levels.
 - Most deputies are actually recommended and voted through by Party organs and relevant organizations.
 - Work inefficiently.



Actors and their roles: the democratic parties

- ◆ Multi-party cooperation and political consultative led by the CCP
- ◆ Make proposals
- ◆ Give opinions



Actors and their roles: civil servants

- ◆ More and more professional
- ◆ Limited room for maneuvering
- ◆ Political and administrative considerations



Actors and their roles: scholars

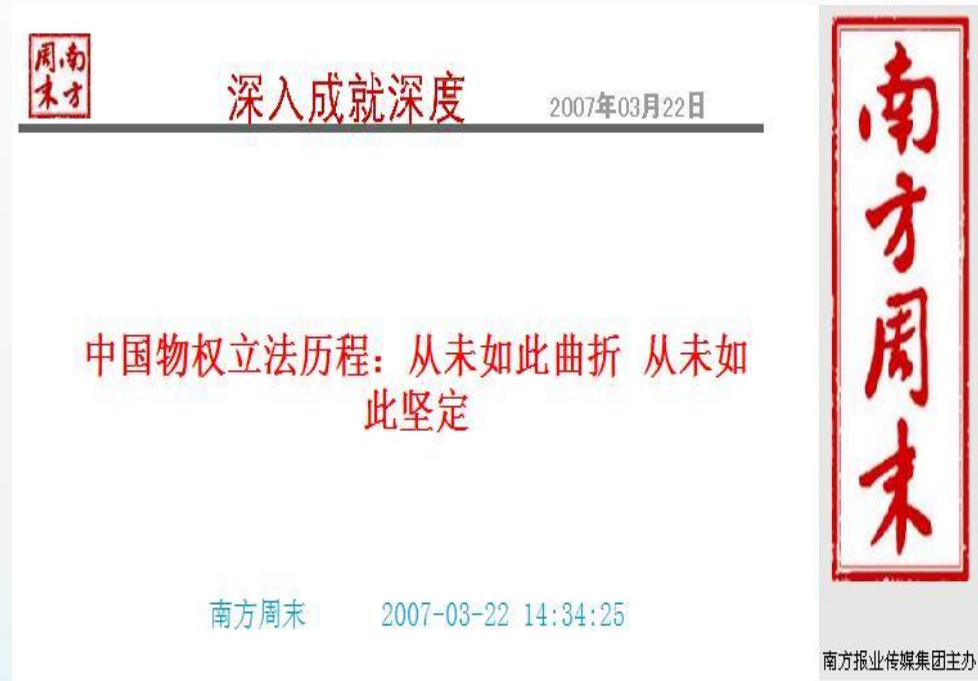
- ◆ Academic contribution
- ◆ Debate through academic exchange
- ◆ Participate in legislation hearings, seminars, workshops, consultations, etc.
- ◆ Introduce comparative approach



Actors and their roles: scholars



◆ Case: Property Law



Prof. Gong Xiantian v. Other civil law professors

Actors and their roles: the media – Sun Zhigang Case

- ◆ 1982 State Council – Measures of Housing and Shipping Off Urban Street People and Beggars (城市流浪乞讨人员收容遣送办法)
- ◆ May 2003: death of Sun Zhigang
- ◆ Three doctors in law asked the NPCSC to review the 1982 “Measures”
- ◆ **Extensive discussions in the media**
- ◆ June 2003: Draft Measures on the Salvation of Urban Street People and Beggars 《城市生活无着的流浪乞讨人员救助管理办法（草案）》



Legal interpretation

		NPCSC	State Council	SPC	SPP
Constitution		√			
Laws	Clarifying actual meaning	√			
	Clarifying legal basis of application	√			
	Specific issues in court trial application			√	
	Specific issues in procuratorial work				√
	Specific issues of non-judicial, non-procuratorial work		√		
	Major differences between SPC and SPP	√			

Executive and judiciary in China

- ◆ Executive: central government led by the Premier in the State Council and local people's governments
- ◆ Judiciary: broad v. narrow

