

学校编码: 10384

分类号\_\_\_\_\_密级\_\_\_\_\_

学号: 12920070153505

UDC\_\_\_\_\_

廈門大學

博士学位论文

议会调查权研究

On the Parliamentary Power of Investigation

李 燕

指导教师姓名: 朱福惠教授

专业名称: 宪法学与行政法学

论文提交日期: 2013年10月

论文答辩时间: 2013年12月

学位授予日期: 2013年 月

答辩委员会主席: \_\_\_\_\_

评 阅 人: \_\_\_\_\_

2013年 月

## 厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下,独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果,均在文中以适当方式明确标明,并符合法律规范和《厦门大学研究生学术活动规范(试行)》。

另外,该学位论文为( )课题(组)的研究成果,获得( )课题(组)经费或实验室的资助,在( )实验室完成。(请在以上括号内填写课题或课题组负责人或实验室名称,未有此项声明内容的,可以不作特别声明。)

声明人(签名):

年 月 日

厦门大学博硕士学位论文摘要库

# 厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

1. 经厦门大学保密委员会审查核定的保密学位论文，于  
年 月 日解密，解密后适用上述授权。

2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月 日

厦门大学博硕士学位论文摘要库

## 内容摘要

议会调查权产生于 14 世纪英国议会与王权斗争的政治实践，经过几百年的发展已经成为议会的一项固有权力，得到了世界大多数国家宪法的确认。论文从历史发展的角度对议会调查的组织机构、程序、法律效果以及宪法限制等问题进行研究，试图证明：在行政权日益膨胀的今天，议会调查权不仅没有衰落反而更加重要，并且由于采取了新的程序和技术，呈现出作为议会的一项独立权力的新的权力面向。

首先，20 世纪以来，随着行政权的膨胀，议会调查机构开始多元化。20 世纪以前，议会委员会是议会调查的主要机构，到了 20 世纪，不仅出现了行政特别调查机构，而且议会也通过立法将调查权委托给行政机关从而实现了议会与行政机关共享调查权的局面。其次，委员会的调查程序呈现出准司法的特性，主要体现在四个方面：一是强调委员会在调查时的独立地位；二是委员会在调查中享有类似于法院的强制调查权；三是注重对议会调查中证人的权利保护；四是调查结果作为议会作出决定的依据。文章专门论述了议会调查权的强制性和证人权利保护这两个问题。再次，议会调查能够产生相应的法律效果，包括导致法律的制订或修改，追究政府的政治责任或法律责任。最后，尽管议会调查权在现代国家非常重要，但也要受到宪法限制，宪法规定的分权原则和基本权利保障原则是法院审查议会调查权的主要准则。结论部分，对前六章的探讨作一归纳总结。在此基础上，分析了我国现行宪法和法律关于全国人大调查权的规定，并提出了完善建议。

**关键词：**议会调查权；权力面向；历史演变

厦门大学博硕士学位论文摘要库

## ABSTRACT

The Parliamentary power of investigation came into being from the struggle between the English parliament and the King in 14<sup>th</sup> century, and has been already confirmed as an inherent power of the parliament by the constitutions of most countries in the world. This paper analyzes the organization structure, procedure, legal effect and constitutional limitations of the parliamentary power of investigation in the perspective of historical development, to prove such a proposition that although the executive power has been expanding increasingly nowadays, the parliamentary power of investigation grows more importantly rather than declines. And as it has adopted new procedures and technologies, it appears new face as an independent power of parliament.

Firstly, since the 20<sup>th</sup> century with the expansion of the executive power, investigation organ began to be diversified. Before the 20<sup>th</sup> century, parliamentary committee is major investigation organ. During the 20<sup>th</sup> century, parliament not only makes use of the special administrative investigation organ, but also constantly entrusts special investigation power to the administrative organ. Secondly, investigation procedure employed by parliamentary committees has the character of quasi-judicial, in four aspects: the first is to emphasize the independent position of investigation committee. The second is that the committee wins the mandatory enforcement power like the court. The third is the reinforcement of quasi-judicial protection of the witness. The fourth is that the parliament makes decisions on basis of the investigation result. This paper specially discusses the mandatory of the investigation power and the quasi-judicial protection to the witness. Thirdly, the investigation result has the legal binding, and can lead to some legal effect. It can force parliament to legislate, result in responsibility and promote the system. The fourth is,



although it is very important in modern society, the parliamentary power of investigation is also limited by the constitution. The principle of separation of powers and fundamental rights is the rule by which the courts check it. Lastly, the conclusion tries to explore a simple summary, and on this basis, analyzes the law regulations on the National People's Congressional investigation power in the current Constitution and laws, afterwards puts forward some improved suggestions.

**Key Words:** The Parliamentary Power of Investigation; Power face; Historical evolution

# 目 录

<b>前 言</b> .....	<b>1</b>
一、本文的论题.....	1
二、研究现状.....	2
三、研究对象和研究框架.....	11
四、研究方法.....	12
<b>第一章 议会调查权的产生及法律性质</b> .....	<b>14</b>
<b>第一节 议会调查权的起源</b> .....	<b>14</b>
一、议会调查权的产生.....	14
二、议会调查权的发展.....	19
<b>第二节 调查权是议会的固有权力</b> .....	<b>24</b>
一、议会的职权.....	24
二、调查权是议会履行宪法职能不可缺少的权力.....	28
<b>第三节 调查权是议会的独立权力</b> .....	<b>30</b>
一、有关议会调查权本质的三种学说.....	30
二、调查权是议会的一项独立权力.....	34
三、调查权作为议会独立权力的特征.....	36
<b>第二章 议会调查权的宪法规定</b> .....	<b>42</b>
<b>第一节 议会调查权宪法规定的方式</b> .....	<b>42</b>
一、议会调查权宪法规定的两种模式.....	42
二、议会调查权在宪法文本中的位置.....	45
<b>第二节 议会调查权启动的宪法规定</b> .....	<b>49</b>
一、议会调查权的启动情形.....	49

二、议会调查权的启动方式.....	52
<b>第三节 议会调查机构的宪法规定 .....</b>	<b>55</b>
一、议院之间调查权的分配.....	55
二、调查机构.....	59
<b>第三章 议会调查的组织机构 .....</b>	<b>61</b>
<b>第一节 委员会模式的普及 .....</b>	<b>61</b>
一、委员会模式普及的原因.....	61
二、议会委员会的类型.....	64
三、常设委员会和特别调查委员会的区别.....	70
<b>第二节 行政特别调查机构 .....</b>	<b>71</b>
一、调查裁判所.....	72
二、英国《调查法》与行政特别调查.....	74
<b>第三节 议会与行政机关共享调查权 .....</b>	<b>78</b>
一、议会通过立法将特别调查权委托给行政机关.....	78
二、行政机关的调查不能取代议会调查.....	81
<b>第四章 议会调查程序 .....</b>	<b>85</b>
<b>第一节 委员会调查程序的性质 .....</b>	<b>85</b>
<b>第二节 议会调查权的强制性 .....</b>	<b>87</b>
一、议会强制调查权的产生.....	87
二、议会强制调查权的演变.....	89
三、议会强制调查权的发展.....	93
<b>第三节 议会调查中的证人权利保护 .....</b>	<b>97</b>
一、人身保护令的作用.....	98
二、禁止自证其罪的适用和发展.....	100
三、其他程序性权利的保护.....	106

<b>第五章 议会调查的法律效果</b> .....	<b>112</b>
<b>第一节 调查报告的通过</b> .....	<b>112</b>
一、调查报告的内容及性质.....	112
二、调查报告的提交和公布.....	114
<b>第二节 调查报告的约束力</b> .....	<b>118</b>
一、调查报告对议会自身的约束力.....	118
二、调查报告对行政机关的约束力.....	120
三、调查报告对法院的约束力.....	122
<b>第三节 议会调查的法律效果</b> .....	<b>124</b>
一、调查促成议会立法.....	124
二、调查导致追究公职人员的法律责任.....	126
三、调查促进法制的完善.....	128
<b>第六章 议会调查权的宪法限制</b> .....	<b>130</b>
<b>第一节 议会调查权是宪法权力</b> .....	<b>130</b>
一、议会主权的兴起与调查权作为议会特权.....	130
二、宪法至上的确立及受宪法约束的议会调查权.....	134
<b>第二节 分权原则对议会调查权的约束</b> .....	<b>140</b>
一、行政特权与议会调查权.....	140
二、司法独立与议会调查权.....	145
<b>第三节 基本权利对议会调查权的约束</b> .....	<b>148</b>
一、基本权利与议会调查权的行使范围.....	149
二、基本权利与议会调查权的行使方式.....	154
<b>结 论</b> .....	<b>157</b>
<b>附录：宪法文本中有关议会调查权的规定</b> .....	<b>166</b>

参考文献 .....180

后 记.....191

厦门大学博硕士论文摘要库

# CONTENTS

<b>Preamble .....</b>	<b>1</b>
Section 1 The topic of this dissertation.....	1
Section 2 The current research status.....	2
Section 3 The object and structure of research .....	11
Section 4 The methods of research .....	12
<b>Chapter 1 The Generation and Legal Characteristics of the Parliamentary Power of Investigation .....</b>	<b>14</b>
<b>Subchapter 1 The Original of the Parliamentary Power of Investigation .....</b>	<b>14</b>
Section 1 The generation of the parliamentary power of investigation .....	14
Section 2 The development of the parliamentary power of investigation ..	19
<b>Subchapter 2 Investigation Power is an Inherent Power of Parliament.....</b>	<b>24</b>
Section 1 The authorities of parliament .....	24
Section 2 Investigation power is indispensability for parliament to perform the functions entrusted by the constitution .....	28
<b>Subchapter 3 Investigation Power is an Independent Power of Parliament.....</b>	<b>30</b>
Section 1 Three theories about the essence of the parliamentary power of investigation .....	30
Section 2 Investigation power is an independent power of parliament .....	34
Section 3 The characteristics of investigation power as an independent power of parliament .....	36

<b>Chapter 2</b>	<b>The Provisions Concerning the Parliamentary Power of Investigation in the Constitutions .....</b>	<b>42</b>
<b>Subchapter 1</b>	<b>The Patterns of the Constitutions Formulating the Parliamentary Power of Investigation .....</b>	<b>42</b>
Section 1	The two models of the constitutions formulating the parliamentary power of investigation .....	42
Section 2	The position of the parliamentary power of investigation in the constitutions .....	45
<b>Subchapter 2</b>	<b>The Provisions Concerning the Initiating of the Parliamentary Power of Investigation in the Constitutions.....</b>	<b>49</b>
Section 1	The precondition of the initiating of the parliamentary power of investigation.....	49
Section 2	The ways of the initiating of the parliamentary power of investigation.....	52
<b>Subchapter 3</b>	<b>The Provisions Concerning the Investigation Organs of Parliament in the Constitutions .....</b>	<b>55</b>
Section 1	The allocation of investigation power between legislative chambers .....	55
Section 2	Investigation organ.....	59
<b>Chapter 3</b>	<b>The Investigation Institutional framework of Parliament.....</b>	<b>61</b>
<b>Subchapter 1</b>	<b>The Popularization of the Committee Model.....</b>	<b>61</b>
Section 1	The causes of the popularization of the committee model .....	61
Section 2	The types of parliamentary committees.....	64

Section 3	The difference between the permanent committee and the special investigation committee .....	70
<b>Subchapter 2</b>	<b>Special Administrative Investigation Organ .....</b>	<b>71</b>
Section 1	Tribunals of inquiry .....	72
Section 2	Inquiries Act of 2005 of UK and special administrative investigation .....	74
<b>Subchapter 3</b>	<b>Parliament and the Administrative Organ Sharing Investigation Power Together .....</b>	<b>78</b>
Section 1	Parliament empowering special investigation power to the administrative organ .....	78
Section 2	The investigation proceed by the administrative organ can't replace the investigation proceed by parliament .....	81
<b>Chapter 4</b>	<b>The Precedure of Investigation Proceed by Parliament .....</b>	<b>85</b>
<b>Subchapter 1</b>	<b>The Characteristics of the Precedure of Investigation Proceed by Parliamentary Committee .....</b>	<b>85</b>
<b>Subchapter 2</b>	<b>The Mandatory of the Parliamentary Power of Investigation .....</b>	<b>87</b>
Section 1	The generation of the mandatory parliamentary power of investigation .....	87
Section 2	The evolution of the mandatory of the parliamentary power of investigation .....	89
Section 3	The development of the mandatory of the parliamentary power of investigation .....	93
<b>Subchapter 3</b>	<b>The Protection for the Rights of the Witness during</b>	



Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to [etd@xmu.edu.cn](mailto:etd@xmu.edu.cn) for delivery details.

厦门大学博硕士论文摘要库