

More Power to the People's Congresses? Parliaments and Parliamentarianism in the People's Republic of China

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Summary

The Chinese Communist Party (CCP) exerts its supremacy over the local and national people's congresses in two major ways: on the one hand, the CCP still tightly controls the various elections of its members, while on the other, it makes sure that the leading bodies of these congresses are dominated by CCP leaders at the same level. Nevertheless, the very existence of these congresses, the influence they exert on and the growing role they play in administrative affairs, particularly in drafting laws and regulations, are all worth assessing, especially in the economic and social environment that is taking shape in China today. The pluralisation of economic interests and the deepening social stratification that are taking place have both had an impact on the election processes and the actual powers of the people's congresses. People's congress delegates will not only continue to act as "remonstrators," but also as participants in the government of the Party-state. However, genuine parliamentarianism has not emerged in China so far. Only when the word "people's" is dropped from the name of the congresses will China's local and national congresses really become true parliaments that democratically represent the people who are supposed to elect them.

I. Introduction

Article 2 of the Constitution of the People's Republic of China stipulates that all power belongs to the people. The National People's Congress (NPC) and the local people's congresses at various levels are the organs (*jiguan*) through which the people can exercise state power (*guojia quanli*). But what actually is "state power" in China? It's true that the current constitution, promulgated in 1982, no longer states that the NPC works "under the leadership of the Chinese Communist Party (CCP)" (*zai Zhongguo gongchandang lingdao xia*), in contrast to the constitution enacted in 1975 at the end of the Cultural Revolution (Article 16, §1). And since 1979, laws on local people's congresses and local people's governments have been adopted and revised several times in order to strengthen these elected bodies. Yet can we really

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argue that the CCP no longer exerts its leadership over people's congresses at the local or the central level?

At this early juncture, we should introduce a word of caution or modesty in this paper. It is particularly difficult, if not impossible, to provide a comprehensive balance sheet of both the election processes of and the actual powers exerted by the local people's congresses for two main reasons. Firstly, there is a dearth of information about many local assemblies. Despite the data assembled by Liu Yawei's Web site "www.chinaelections.org" and others, information on or research into most of the 50,000 or so local congresses remains scarce.¹ Secondly, the situation is complex and uneven: analyses unveil very different and sometimes contradictory situations.

Having said that, the Party exerts its supremacy over the local and national people's congresses in two major ways, as we will see. On the one hand, the CCP still tightly controls the various elections of its members. On the other, it makes sure that the leading bodies of these congresses are dominated by CCP leaders at the same level. Nevertheless, the very existence of these congresses, the influence they exert on and the growing role they play in administrative affairs, particularly in drafting laws and regulations, are worth assessing, especially in the economic and social environment that is taking shape in China today. The pluralisation of economic interests and the deepening social stratification have had an impact both on the election processes and the actual powers of the people's congresses. In a nutshell, therefore, the answer to the question encapsulated in the title of this paper is a positive one. People's congress delegates will not only continue to act as "remonstrators," as Kevin O'Brien has shown, but also as participators in the government of the Party-state.² Can we jump to the conclusion that a genuine parliamentarianism has emerged in China, however? In short, the answer is no. On the following pages, we will develop the argument that China's local and national congresses will only really become true parliaments and democratically represent the people who are supposed to elect them once the word "people's" has been dropped from the term for the congresses.

II. Elections

How does a citizen become a delegate to a people's congress? The short answer is that delegates have to be recommended (*tuijian*) by the CCP. Things are actually more complicated than that, however, and all sorts of people, including members of the new elites (e.g. private entrepreneurs), have been elected to local people's congresses. That being said, the rules of the game remain quite different for people's

¹ In 2004, there were around 44,067 townships and towns, 1,642 counties, 374 county-level municipalities, 845 urban districts, 282 prefecture-level municipalities and 31 provincial-level units. All of these constituencies have a people's congress. *Zhonghua renmin gongheguo xingzhengqu huajiance*, 2004, Beijing: Zhongguo ditu chubanshe, 2004, p. 1.

² Kevin J. O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies," *The China Quarterly*, No. 138, June 1994, pp. 359-380.

congresses at township (*xiang*) and county (*xian*) levels that are directly elected by voters, and they are also very different for the ones that are not.

Direct election of people's congresses at township and county levels

Delegates from people's congresses at township and town level (*zhen*) and those of county-level people's congresses are directly elected by the citizens. Those from small municipalities (*xianjishi*) or urban districts (*shixiaqu*) have been directly elected since 1979. Although the 1979 Election Law was revised three times up to 2004 (1982, 1986 and 1995), the actual procedures did not change a great deal: the Party ran the show. It was only in 2004 that a more substantial wave of amendments was introduced. In March 2004, the NPC decided to revise the Constitution and extend the term of *xiang* and *xian* people's congresses from three to five years, unifying and standardising their term with that of the people's congresses at higher levels. And more importantly, in October 2004, a fourth revision of the 1979 Election Law was adopted by the NPC, which somewhat opened up the rules of the game.³

To be sure, the CCP continues to play a key role in the election of these delegates. Legally, every citizen who is 18 years or older is entitled to vote and stand for election (Article 34 of the Constitution, Article 3 of the Election Law). Anyone publicly supported by ten other citizens can submit his or her candidacy for an election to a local people's congress. Electoral committees both at the *xiang* and *xian* levels officially operate under the leadership of the standing committee of the *xian* people's congress. And electoral work is "guided" by the standing committee of the provincial congress, which, for instance, decides on the size of every grass-roots congress

In 1998, for instance, the CCP committees in Shandong and Qingdao gave instructions to limit the number of delegates belonging to the party to 65% and to guarantee that at least 25% of the elected candidates were female.⁶

It's true that since 1979, the list of candidates has to be 33% to 100% larger than the number of seats in every congress (*cha'e xuanju*). The ballot is a secret one, and voters can vote for someone who is not on the list (Article 34) and even recall their deputies (Article 40) if they wish to. There is no formal electoral campaign: candidates are just introduced to "voters' groups" by the institution or the people who have sponsored them.

However, it is not so much these new freedoms but the changing structures of the local elites that have had a dramatic impact on the membership of the people's congresses. For one thing, some restrictions to the law were introduced after 1986 because of the "uncontrolled" developments that the 1979 law had triggered.⁷ In 1979, for instance, the support of three citizens was sufficient to submit an independent candidacy, whereas ten are now necessary; the number of candidates had to be at least 50% higher than the number of seats, and primaries had a legal status. The 2004 revision did not loosen these restrictions introduced in 1986.

Primaries (*yuxuan*) will continue to take place until the 2004 revision (the fourth one) comes into effect (see below), but these are rather murky procedures.⁸ Abolished in 1986, primaries were only restored in 1995. They were not put into practice everywhere, though. In most cases, voters barely know anything about the candidates except their faces and basic biographical information.⁹ The law no longer formally authorises candidates to provide propaganda about their platform, as used to be the case until 1982 (Article 30 of the 1979 election law).

Two models of direct elections have emerged since 1979, and in particular since 1995: direct elections (*haixuan*) and primaries. The first model is somewhat misleading since, contrary to village elections, the CCP-led election committees have usually managed, to limit the number of candidates to the legal ratio through "consultation and fermentation" (33% to 100% higher than the number of seats). In such districts, the CCP has continued to recommend most candidates in order to make sure that the above-mentioned quotas can be filled and the party remains in the driver's seat in the local people's congresses. This model has been dominant in many parts of the country, including some of the most prosperous provinces (e.g. Jiangsu).

⁶ Shi Weimin & Lei Jingxuan, *Zhijie xuanju; zhidu yu guocheng. Xian(qu)ji renda daibiao xuanju shizheng yanjiu* (Direct Elections: System and Process. Positive research on the county (district) level people's congress election), Beijing: Zhongguo shihui kexueyuan chubanshe, 1999, p. 92.

⁷ Brantly Womack, "The 1980 County-Level Elections in China: Experiment in Democratic Modernization," *Asian Survey*, Vol. XXII, No. 3, March 1982, pp. 261-277.

⁸ Oscar Almén, *Authoritarianism Constrained. The Role of Local People's Congresses in China*, PhD dissertation, Department of Peace and Development Research, Göteborg University, 2005, pp. 91-93.

⁹ Melanie Manion, "Chinese Democratization in Perspective: Electorates and Selectorates at the Township Level" (Report from the Field), *The China Quarterly*, No. 163, September 2000, pp. 764-782.

Because of the number of independent candidates and pressure from society, however, primaries have been organised in a growing number of districts and townships, in particular (but not only) where a large number of candidates (sometimes over half of them) are not recommended by the Party but by citizens (Beijing, Tianjin, Yunnan, Shandong and Guangdong).¹⁰

On the whole, though, the CCP has managed to ensure that these elected bodies largely continue to consist of CCP cadres or people close to the local government and Party committee, disregarding the law when it goes against its own interests. Having said that, the emergence of new elites, such as private or semi-private entrepreneurs, and the growing influence of experts in the political system (managers, engineers, architects, lawyers, scholars, etc.) have metamorphosed the membership of both the CCP and, therefore, the grass-roots people's congresses. Today, more than at any time in the history of the PRC, local elites are urged to join the CCP. As we know, since Jiang Zemin's speech on the "Three Represents" (*san ge daibiao*) in 2001, even capitalists have been formally welcomed into the Party. This dramatic change of approach in many ways represents the consideration given to not only a socio-economic, but also a political evolution that had been visible since Deng Xiaoping relaunched the economic reforms in January 1992. At the same time, this new environment has altered the way that the CCP operates and that CCP members regard themselves as well as their relationship to the Party: in other words, the CCP is no longer an army of obedient soldiers (was this ever the case?), but an organisation fractured by many conflicting economic and social interests.

These new rules of CCP recruitment have not failed to have a direct effect on the membership of China's grass-roots people's congresses, creating a momentum in the election of these bodies that some would call a "virtuous circle" of incremental political reform. Having been invited to join the Party and advise its local leaders, these elites have become more assertive and have therefore developed a clearer interest in running for a seat in a congress that, in the same lapse of time, has acquired more say – for instance in the drafting and approval of local regulations.¹¹ The ambition to become part of the local political establishment in order to benefit one's business enterprise cannot be excluded as a motive either. In such circumstances, competition for seats among these elites has been burgeoning here and there, allowing voters to influence the result of the ballot to a degree. New phenomena, such as seat- and vote-buying, have appeared, underscoring rather than weaken-

¹⁰ Almén, *op. cit.*

¹¹ Bruce J. Dickson, *Red Capitalists in China. The Party, Private Entrepreneurs, and Prospects for Political Change*, Cambridge, Ma.: Cambridge University Press, 2003, pp. 122ff.

ing the competitive dimension of these elections.¹² This development has often resulted in younger and more educated delegates being promoted.¹³

More generally, the partial liberalisation of the political environment and the pluralisation of interests within society have encouraged more and more independent candidates to try their luck. One can find a fair number of people among them who have made themselves known to their community through some kind of social activism or as leaders of owners' associations, underlining the role played by these new associations in local political life, at least in urban areas.¹⁴ This does not mean that they manage to gain acceptance from the authorities as candidates for local congresses, however – many cases prove the opposite, in fact. In March 2003, for instance, an independent candidate named Hu Dezhai failed to get onto the election list for the Shanghai people's congress despite receiving the support of 110 local voters and overcoming every jurisdictional issue. The election committee actually made phone calls to the people who had signed the petition nominating Mr. Hu, asking them "not to stir up trouble," and kept him off the ballot. Mr. Hu, 49, a Communist Party member and a teacher of law at the Shanghai branch of the Party's school network, was no dissident. However, he had earned himself a reputation with the authorities as well as in his community when in 1995 he led a group of citizens that took to court a company that had polluted his neighbourhood following a leak from a chlorine pipeline (the group sought higher compensation). Since then he'd been perceived as a "troublemaker" by the Shanghai government, which obviously wanted to prevent this new breed of "local politicians" from setting foot in the local legislatures, precisely because they are regarded by their neighbours as their "natural leaders."¹⁵ The battle is far from over, and other cases tend to suggest that perseverance eventually pays off. For instance, in Qingjiang near the central Chinese city of Wuhan, Yao Lifa, an education official but not a party member, eventually managed to get elected to the local people's congress in 1998 with the support of the voters and after ten years of fighting against the local party hierarchy, which refused to put his name on the list of candidates. However, five years later, he failed in his re-election bid because, some argued, he had threatened entrenched local interests.¹⁶

Shenzhen offered another example of similar pressure and resistance in May 2003, to the point that the Chinese media spoke of an "election storm" in the special economic zone. A few independent "write-in" candidates (unapproved by the authorities and thus not included on the list of candidates) ran for election to local congresses.

¹² Cf. the case of vote-buying in Taizhou municipality, Zhejiang, *Mingbao*, 24 April 2003, p. 33.

¹³ Kevin O'Brien & Lianjiang Li, "Chinese Political Reform and the Question of 'Deputy Quality,'" *China Information*, Vol. 8, No. 3, 1993-1994, pp. 20-31.

¹⁴ Benjamin L. Read, "Democratizing the Neighbourhood? New Private Housing and Home-owner Self-organization in Urban China," *The China Journal*, No. 49, January 2003, pp. 31-59.

¹⁵ *New York Times*, 9 March 2002 & 2 March 2003. Regarding the 1997-1998 elections, cf. Shi Weimin & Lei Jingxuan, *Zhijie xuanju*, *op. cit.*

¹⁶ BBC, 10 December 2003, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/3304123.stm>.

Two of them, both chairmen of owners' associations (Zou Jiajian and Wu Haining), developed a new type of campaign, distributing letters detailing their commitments to the inhabitants of the housing complex whose interests they had protected. Although they were not elected, another write-in candidate was more successful – Wang Liang, 44, the head of a local technical college who had been trained abroad. True, this was a special case: Liang was supported by all his college staff, who were frustrated by the absence of any representative from their college in the local people's congress. But the interesting development was that on election day, no candidate got more than 50% of the votes, and Wang came out on top. The authorities then decided to endorse Wang's candidacy and in a run-off, he easily won the election against his main opponent.¹⁷

In December 2003, Peking provided another illustration of the timid opening of elections to district people's congresses. Around 15 write-in candidates ran, and some of them managed to get elected. This was a small number compared to the 4,403 seats to be filled in the 18 urban districts of the capital (an average of 245 delegates for each assembly). This ballot created a lot of friction and resentment among the independent candidates, including several idealistic students who participated in this election.¹⁸

In any case, the 2003 elections increased the pressure for further reform of the Election Law. On 24 August 2004, Hu Kangsheng, chairman of the Judicial Affairs Committee of the NPC, announced four major amendments to the law: 1) the reintroduction and institutionalisation of primaries in order to determine the final list of candidates in a more transparent and open manner; 2) approval for candidates to meet voters face to face, a practice that had been tolerated here and there, but also banned in many places because it was not formally authorised by the law; 3) the specification of recall procedures, a right originating in the Soviet Union and enshrined in the 1979 Election Law, but never previously fleshed out with procedural rules; 4) the introduction of tougher penalties for any violation of the electoral law.¹⁹

Some criticised these proposals as being too cautious and suggested more sweeping reforms such as raising the level of direct elections, changing the method of drawing electoral districts, and reducing the gap in representation between rural and urban areas, the former being notably underrepresented. Some even called for primaries to become the only mechanism by which the final candidates should be determined,

¹⁷ *Nanfang dushibao* (Southern Metropolitan News), 22 May 2003 & 23 May 2003; *Zhongguo qingnian bao* (China Youth Daily), 21 May 2003 & 26 May 2003.

¹⁸ www.chinaelections.org.

¹⁹ Hu Kangsheng, "Guanyu Zhonghua renmin gongheguo quanguo renmin daibiao dahui he difang geji renmin daibiao dahui xuanjufa xiuzhengang (cao'an)" (On the Draft of the Amendment to the Election Law of the Deputies to the National People's Congress and to the People's Congress at All Local Levels), *Renmin Ribao* (People's Daily), 24 August 2004.

not a secondary measure, and for the Party and the government to be barred from nominating candidates.²⁰

However, the NPC Standing Committee (NPCSC) approved the draft without any new additions on 27 October 2004. Moreover, it will remain impossible to assess these cautious changes before they are implemented in the local elections due to take place between 1 July 2006 and 31 December 2007.

There is a good chance that the CCP will continue to closely supervise both the primaries and the elections to prevent too many independent candidates, in particular organised ones, from getting elected and eventually making their way into the standing committees of the people's congresses, which, at the county level and above, exercise most of the formal powers enjoyed by these assemblies (see below).²¹

Indirect elections of city, provincial and national congresses

People's congresses at the prefecture (*dijishi*, or large municipalities divided into districts, *shequ de shi*) and provincial levels (including five autonomous regions, *zizhiqu*, and four municipalities directly under the central government, *zhixiashi*) are elected by the people's congresses of the lower level (Article 97 of the Constitution). Most of the NPC delegates are elected by the people's congresses at the provincial level (31 constituencies). The four other NPC constituencies (Hong Kong, Macao, Taiwan and the People's Liberation Army) are elected using special procedures.²²

Since 1979, the number of candidates has had to be larger than the number of seats, as in the direct election of grass-roots people's congresses. However, these indirect elections have remained even more tightly controlled by the Party. For one thing, the proportion is narrower: 20% to 50% as opposed to 33% to 100%. There is conse-

²⁰ Fan Yafeng, "Xuanjufa xiugai he renda zhuanxing" (Revising the Election Law and the Transformation of the People's Congresses) in: *Zhongguo zhouskan* (China Newsweek), 30 August 2004; Zuo Zhihong, "Guangdong renda jianyi quanguo renda xunyun daibiao houxuanren gongkai xuanchuan" (Guangdong People's Congress Recommends to the NPC: Allow Candidates to Publicize Themselves), in: *Kuainiao* (Express Daily), 20 September 2004.

²¹ In 1998, members of the China Democracy Party tried to register their organisation as an NGO in numerous cities and in September of that year three members of this party announced their candidacy for election to Chaoyang District's people's congress in Beijing. They were later arrested and sentenced to long jail terms. Minxin Pei, "Rights and Resistances: The Changing Contexts of the Dissident Movement," in Elizabeth J. Perry & Mark Selden (eds.), *Chinese Society: Change, Conflict and Resistance*, London: Routledge, 2000, p. 28.

²² Since 1995, municipalities divided into districts, municipalities directly under the central government and provincial-level people's congresses cannot include more than 650, 790 and 1,000 delegates respectively, the total number being based on population growth and decided by the NPC. Since 1986, it has not been possible to have more than 3,000 NPC delegates. Cf. Cai, *Zhongguo renmin daibiao dahui zhidu*, op. cit., pp. 148-157.

quently less uncertainty. In 1998, for instance, only 87 of the 120 candidates presented at the Zhejiang people's congress were elected to the NPC.²³

True, candidates are not limited to deputies of the electoral units and Article 3 of the Election Law also applies to these elections. Moreover, ten or more deputies of the incumbent people's congress are also entitled to nominate candidates (they have to belong to the same electoral unit for the NPC). But in reality, all candidates to intermediary people's congresses and the NPC are nominated by the CCP "in consultation with the other parties and the people's organisations" at the respective level.²⁴ Although the eight so-called "democratic parties" represented in the people's political consultative conferences both at the national and the local levels are consulted and can submit candidates according to fixed-procedures, the CCP controls the quotas given to these very obedient organisations. The standing committees of the incumbent people's congresses also play an important part in the drafting of the list of candidates. For instance, in 1998 the NPC leadership formally recommended 225 centrally assigned (*zhongyang fenpei*) candidates to the various provincial groups of the 9th NPC in order to take the principles of representation more into account.²⁵

At every level, the CCP in fact applies representation principles that privilege not only national minorities, women and returned overseas Chinese but also urban dwellers over rural residents. The election of the NPC includes even more criteria that were updated in 2002. Firstly, the list of candidates in the 35 constituencies must include enough minority people so that every ethnic minority is represented by at least one delegate. Overall they are supposed to represent at least 12% of the delegates (13.91% in 2003). Secondly, a growing proportion of women should be included, although actually this commitment was not respected in 2003 (20.24% of women as opposed to 21.81% in 1998). Thirdly, although the gap between rural and urban representation narrowed in the 1990s (one deputy for 880,000 rural residents and one for 220,000 urban dwellers in 1998 as opposed to a one to eight ratio before 1995), it increased again in 2003 (one delegate for 960,000 rural residents and one for 240,000 urban dwellers). But the best-represented "constituency" remains the PLA, which is estimated to number 2.3 million people. This still provides 6 delegates, a ratio amounting to one deputy for every 8,582 soldiers, as opposed to an average of one deputy for every 35,511 citizens and one deputy for every 1.08 million women! Hong Kong (36 deputies for 7 million inhabitants), Macao (12 deputies for 450,000 inhabitants) and Taiwan (13 deputies for about 33,000 Taiwanese residing on the mainland, as distinct from the Taiwanese business people or *Taishang*) are also over-represented.

²³ *Renmin Ribao* (RMRB, People's Daily), 13 March 2002, p. 8.

²⁴ Almén, *op. cit.*, pp. 118-121.

²⁵ On the election to the NPC, cf. Cai, *Zhongguo renmin daibiao dahui zhidu*, pp. 157-159; Jiang Jin-song, *The National People's Congress of China*, Peking: Foreign Languages Press, 2002, pp. 86-115.

More importantly, the proportion of CCP members among NPC delegates is increasing rather than decreasing (68.4% in 1993 and 71.5% in 1998).²⁶ And although no data was published in 2003, the number of "democratic party" and non-partisan delegates only slightly grew between 1998 and 2003 (480 v. 460), strongly suggesting that more than two thirds of the NPC are still made up of CCP members. Similarly, cadres have remained the largest group in the NPC (one third of the delegates in 2003) while workers and farmers have shrunk to 18%, compared to 51% in 1975 at the end of the Cultural Revolution.²⁷ Finally, more private entrepreneurs or rather, "people involved in the non-public economy" (*feigongyouzhi jingji renshi*) sit in the NPC (133 in 2003 as against 48 in 1998). In spite of the arrival of these representatives of the "new elites," the "traditional elites" therefore continue to dominate the National Assembly.²⁸

Table 1: Membership Composition of the 9th and 10th NPC

	9th NPC		10th NPC	
	(1998-2003)	(2003-2008)	Member	%
Workers & farmers	563	18.89	551	18.46
Intellectuals	628	21.07	631	21.14
Cadres	988	33.16	968	32.44
Members of democratic parties and non-partisan patriots	460	15.44	480	16.09
PLA	268	8.99	268	8.98
Residents of Hong Kong	35	1.21	36	1.21
Residents of Macau	12	0.4	12	0.4
Residents of Taiwan	13	0.4		

The election of the standing committees and the leadership of the people's congresses

The leadership of these people's congresses is dominated even more strongly by the CCP. It is true that the 1979 law introduced a deg 431.81424 705.3 7393383.38116 693.3203ee3 Tmc3 Tm(o)Tj10

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At the national level, the Standing Committee of the NPC (159 members elected from 167 candidates) is mainly constituted of retired ministers, provincial governors or generals.³² This body is also dominated by Communist Party members. In 1993, for example, 69.7% of NPCSC members belonged to the CCP, while 30.3% represented the "democratic parties".³³ The NPC chairmanship is even more tightly controlled by the Party leadership: its chairman since 2003, Wu Bangguo, sits on the Politburo Standing Committee, the nine-member supreme decision-making body of the CCP, while Wang Zhaoguo, a key vice-chairman, also belongs to the very exclusive Politburo (24 members plus one alternate member). The status of the NPC has improved within the Party: since 1993, its chairman has been an *ex officio* member of the Politburo Standing Committee (Qiao Shi, while Peng Zhen and Wan Li, his predecessors, were only members of the Politburo) and since 1998 he has officially been the number two of the CCP and the regime (Li Peng and then Wu Bangguo) before the Prime minister (Zhu Rongji and then Wen Jiabao). Nevertheless, things should be presented the other way round: Wu and Zhao are the two top Party leaders in charge of the NPC system, receiving assistance from NPC Secretary-General Sheng Huaren, a CCP Central Committee member and a former minister of economy and trade.

Most deputies of the intermediary people's congresses or the NPC therefore have close links with the Party-state. "Fellow travellers" of the CCP such as leaders of the various democratic parties also sit in the people's congresses, as well as a more or less "politically correct" number of representatives of ethnic minorities and women. However, the few independent delegates who have managed to get elected to the grass-roots people's congresses do not have enough influence in these bodies to open up the election system of the people's congresses at upper levels. These congresses are still dominated by the local party elite and the representatives of the "new elites" that the former has an interest in inviting to take part in the political life of the constituency. In other words, the people's congresses do not enjoy any democratic legitimacy. However, because of the growing role they play in some areas, they are legitimate in the eyes of the Party-state elite. Some sort of true competition for deputy seats, and more importantly standing committee membership, has emerged at every level wi

III. Powers

According to the Constitution and the law, people's congresses enjoy extensive powers: they elect and recall the government leadership of their constituency, adopt resolutions and decide on plans for local economic and cultural development.³⁴ They can also organise inquiries into government organs and activities; at the *xian* level and above, they approve local development plans and budgets, elect and recall the president of the local court and the chief procurator and can also alter or annul decisions reached by their standing committee. Moreover, at the provincial level, they can adopt regulations adapted to local circumstances, providing they don't contravene the Constitution or any national laws.

The NPC enjoys even greater powers: it amends and controls the implementation of the Constitution; submits law proposals (with the approval of 30 deputies) and enacts major basic laws; in addition to the central government, supreme court and supreme procuratorate leaders, it elects and removes the President and Vice-President of the Republic from office as well as the Chairman and members of the Central Military Commission; and it makes decisions on questions of war and peace.

However, being a deputy both at the local and national level is an unpaid part-time job that includes one or two congress meetings a year; most powers are therefore legally concentrated, at the county level and above, in the standing committees of these congresses. In addition to most of the powers listed above, the standing committees can also annul "inappropriate decisions and orders of the government at the corresponding level" as well as "inappropriate resolutions of the people's congress at the next lower level" (Article 104 of the Constitution). And at the national level, the powers of the NPCSC are even more overwhelming: only the revision of the Constitution has to be approved by the NPC as such; other decisions can be taken, sometimes pending confirmation at the next meeting of the NPC (such as the appointment of the Premier), by the Standing Committee. Listed in Article 67 of the Constitution, these powers often cannot be exerted by the NPC plenary session: they include supervising the work of the State Council (the central government), the Supreme Court and Supreme Procuratorate, appointing ambassadors, ratifying treaties or imposing martial law (state of emergency since 2004). In other words, meeting every two months for a week to ten days, the NPCSC is the body that currently appears the closest to a real parliament in China. But is it a parliament? Can Chinese

³⁴ In this paper, we will not discuss the few cases of direct elections of township magistrates, for instance in Buyun (Sichuan) or in Dapeng (Shenzhen). On this question, cf. Lianjiang Li, "The Politics of Introducing Direct Township Elections in China," *The China Quarterly*, No. 171, September 2002; Zhang Jingmin & Ma Shengkang (eds.), *Buyun zhixuan* (Direct Elections in Buyun), Xi'an: Xibei daxue chubanshe, 2004; Huang Weiping & Zou Shubin (eds.), *Xiangzhenchang xuanju fangshi gaige: Anli yanjiu* (Research on Cases of Reform of Electoral Way of Township Chiefs), Peking: Shehui kexue wenxian chubanshe, 2003. Cf. also Joseph Cheng, "Direct Elections of Town and Township Heads in China: The Dapeng and Buyun Experiments," *China Information*, Vol. XV, No. 1, pp. 104-137.

local people's congresses and their standing committees become true local parliaments? More generally, how much real power do these assemblies exert?

Powers of local people's congresses: an incomplete and uneven picture

As indicated in the introduction, the picture that we can sketch of the powers of the local people's congresses is, by necessity, incomplete and uneven. In the current circumstances, the best approach to this question is probably an institutional one. To what extent do local assemblies exert the powers given to them by law?

As we have seen, the law grants the local congresses three major categories of powers: 1) drafting regulations; 2) appointment; and 3) control of the local government and judiciary. Moreover, in the last few years, in order to enhance the legitimacy of the local deputies at each level, the Party has required them to develop their role of intermediary between the voters and the government.³⁵

1) Drafting regulations

Enjoyed by provincial level people's congresses, the power to draft local regulations (*difang fagui*) was extended to the congresses of provincial capital cities and some other big municipalities in 1986 (Article 7, §2 of the Election Law). This is probably the area in which, as at the central level (cf. below), a real division of labour has taken shape in the last two decades, and in particular since the early 1990s. To be sure, the drafting initiative has almost entirely remained in the hands of the local governments, their legislation office (*fazhi bumen*) (and, of course, the Party committees that lead them). Nevertheless, local congresses have developed a bureaucracy that is largely focused on participating as actively as possible in the drafting work. We can assert to some extent that local governments have delegated part of the drafting process to the congresses, turning the law committees of the latter into secondary "administrative legal work bodies."

But supervised by the congresses' leaderships, these law committees have also developed their own professional and political interests, adding another institutional layer to the decision-making process in this area. Through this new layer, other interests, in particular those of businesspeople, can more easily express themselves and come into conflict with the interests of the government. The Party committees, which, as we have seen, supervise both the governments (always headed by the number two on the Party committee) and the congresses (often chaired by the Party secretary), can, of course, prevent disputes from intensifying and are in a strong position to reconcile opposing views and re-establish a consensus. But examples

³⁵ On the powers of the local people's congresses, cf. Roderick MacFarquhar, "Report from the Field: Provincial People's Congresses," *The China Quarterly*, No. 155, September 1998, pp. 656-667; Ming Xia, "Political Contestation and the Emergence of the Provincial People's Congresses as Power Players in Chinese Politics: a network explanation," *Journal of Contemporary China*, 2000, Vol. 9, No. 24, pp. 185-214.

have shown that local regulation drafting has been one of the areas in which provincial and municipal congresses have developed their expertise the most, and have thus at least developed genuine influence, if not real power.³⁶

2) Appointments

As we have seen, the law grants local people's congresses limited power to influence appointments. To put things into perspective, the large majority of local officials who are legally elected by the people's congresses are hand-picked by the Party according to the usual rules of *nomenklatura* (governors, deputy governors, mayors, deputy mayors, chief judges and chief procurators).³⁷ However, the homeopathic dose of choice introduced by the law has been increasingly used by the people's congresses, in particular when local conflicts of interests have divided the local Party-state elite. The political environment has also constantly influenced this game. Typically, the first noticeable cases of unexpected elections occurred in the years 1987-1988. Some official candidates for county magistrates' positions were defeated, while candidates sponsored by the people's congresses themselves (or a group of deputies) won. A certain amount of competition did take place for the position of deputy governor in most provinces (28 out of 30), although competition was very unevenly introduced for the main positions in the provincial governments (governor, mayor: 8 out of 30) and judiciary (chief judges: 13 out of 30). The Party then indicated that 76% of its candidates had been elected.³⁸

After Tiananmen, "unequal number elections" were *de facto* frozen for two years in most places. And when unofficial candidates were preferred by the congresses, local Party authorities sometimes decided not to recognise them, appointing their own candidate as governor or mayor instead. Deplored by Wan Li, then NPC chairman, in 1992, such cases were far from isolated.³⁹

The revival of economic reforms that year contributed to the situation where more say was given back to the people's congresses. In 1993, two widely publicised cases where outsiders were elected took place at the provincial level: the first one was in Zhejiang, where Wang Xueyan was preferred by the deputies to Ge Hongsheng, the official candidate, for the position of governor; the second one was in Guizhou,

³⁶ To the point that a deputy in Anhui named Gao Minglun, citing "limited legal knowledge" and a desire to concentrate on doing well in his day job, requested on his own initiative that he be allowed to vacate his seat on the Standing Committee of the Anhui Provincial People's Congress; the Committee approved his request this month by a large margin. *Xinhua*, 30 January 2005. Some people's congresses, as in Shenzhen or Chengdu, have decided to hire legal experts to prevent their regulatory power from slipping totally into the hands of the government. *Zhongguo zhouskan* (Newsweek), 17 September 2004.

³⁷ On the *Nomenklatura* system, cf. John P. Burns, *The Chinese Communist Party Nomenklatura System*, Armonk, NY: M. E. Sharpe, 1989 and "Strengthening Central CCP Control of Leadership Selection; The 1990 Nomenklatura," *The China Quarterly*, No. 138, June 1994, pp. 458-491.

³⁸ *Xinhua*, 15 September 1987; *Beijing Information*, No. 37, 12 September 1988 and No. 42, 21 October 1991, p. 27; cf. also, Cabestan, *Le système politique de la Chine populaire*, op. cit., p. 341.

³⁹ *Xinhua*, 25 February 1992.

where Chen Shineng, suspected of sympathising with the Tiananmen movement, was elected governor to replace Wang Chaowen, the official candidate.⁴⁰ In other areas, local party authorities have had to "persuade" deputies to vote for their candidate more frequently, underscoring the fact that there were real conflicts and much bargaining in the election processes.⁴¹

In 1993 the Party consequently decided to supervise these elections more closely by appointing the Party secretary as chairman of the local people's congress as often as possible.⁴² This deliberate policy, as we have seen, is still in place now, corseting the appointment power of these assemblies. It has not prevented them from becoming more assertive, however, and sometimes they are even prepared to challenge the diktats of their chairperson.

Appointment and recall powers have become a way of exerting control over the government. In January 2003, for instance, the official candidate to the post of mayor of Yueyang in Hunan failed to get re-elected, although he was the only candidate: he received less than 50% of the votes.⁴³ Two years later, in early 2005, the Standing Committee of the Nanjing City People's Congress voted to recall the head of the city's Public Goods Department because he had got drunk and caused trouble.⁴⁴ But at the same time, the power of the congresses to make appointments has become a source of vote-buying and corruption.⁴⁵ This new practice again underlines the fact that when competition for government positions is introduced, even in a tightly managed political system it can consolidate the power of an institution initially considered a rubber-stamp body.

3) Approval and Control

Legally, local people's congresses enjoy extensive powers of approval and control of government activities, in particular where finances are concerned. However, in reality, despite their growing assertiveness, they have been able to demonstrate their criticism or opposition more effectively than forcing the administration to show more transparency or change its policies.⁴⁶

⁴⁰ *Wenhuibao* (Hong Kong), 7 February 1993, p. 1.

⁴¹ This was the case in 1993 concerning the election of Peking's mayor Li Qiyan and Sichuan's governor Xiaoyang. *Mingbao*, 14 February 1993, p. 24.

⁴² *RMRB*, 15 January 1993, p. 1.

⁴³ *Mingbao*, 4 January 2003, p. A22.

⁴⁴ *Xinhua*, 30 January 2005.

⁴⁵ Many cases have been reported by the Chinese media in the last few years: for example, in Ji county, Linfen City in Shanxi (*South China Morning Post*, *SCMP*, 15 January 2001, p. 8), in Yuncheng City (Shanxi) where "wealthy local businessmen" bribed deputies in order to become vice-mayors (*SCMP*, 20 October 2001, p. 9), in Heping county, Guangdong (*SCMP*, 21 November 2001, p. 9), in Yi county, Jinzhou City, Liaoning (*Mingbao*, 20 January 2003, p. A22) and in Xiangtan City, Hunan, where a local official decided to buy votes after he learnt that he had not received official endorsement for the position of vice-mayor (*Mingbao*, 20 June 2003, p. A24).

⁴⁶ Cai Dingjian, "Renda jiandu zai tansuo zhong fazhan" (Exploration of the development of people's congress supervision), Dong Zhenang, "Renda jiandu fangshi xin tansuo de pingshu yu sikao" (New

As at the national level, the plenary meetings of the local congresses, held in late February or early March every year, are primarily an occasion on which to debate government decisions and policies. Standing committee meetings also frequently play this role. In the last decade or so, these meetings have equally become an opportunity to criticise the weaknesses of the bureaucracy and scrutinise reports of its work and its budget as well as the reports of the work conducted by the people's court and people's procuratorate. Whenever the congress is unhappy with one of these reports, it rejects it, forcing the administration in question to redraft it or redress its mistakes. The first reported case of a veto occurred in the city of Shenyang (Liaoning) in 2001: the work report of the intermediary people's court was rejected by the deputies, who protested against the involvement of the city government and the court in a huge corruption scandal which ended with the mayor, some court officials and deputies serving prison sentences.⁴⁷

Local congresses do not have much leverage to change policies, however. For one thing, by the time they meet, the budget has not only been approved, but partly implemented by the government. Certain reformers have suggested moving the beginning of the fiscal year to April, but this seems unlikely to happen in the foreseeable future. Regularly convening local congresses in autumn would seem a more realistic possibility. In some provinces though, such as Guangdong, Hubei, Hunan and Zhejiang, the local people's congresses have been caught up in an "accounting storm," forcing the government to provide detailed information on their finances.

For the moment, it's hard to assess the results of this rather recent pressure. We have to keep in mind that a great deal of information is not forwarded to the congresses' budget or finance work committees since it is not formally included in the official local budget (the well-known extra-budgetary funds, for example). Moreover, these committees often don't have the staff or the expertise to screen all the financial documents forwarded by the government.⁴⁸

Nevertheless, what is worth noticing is the growing ambition on the part of the local people's congresses to utilise their legal powers to monitor the government's actions

explorations of people's congress supervisory methods) and Lu Jiangtong, "Renda zhiquan bu daowei shi yifa zhiguo bixu jie jue de yi ge nanti" (The non-fulfilment of the power of the people's congresses is a problem for the rule of law that needs to be solved) in: Cai Dingjian & Wang Chenguang (eds.), *Renmin daibiao dahui ershinian fazhan yu gaige* (Twenty Years of People's Congress Development and Reform), Beijing: Zhongguo jiancha chubanshe, 2000, pp. 265-276, pp. 277-296 & pp. 401-419. Cho Young Nam, "From 'Rubber Stamps' to 'Iron Stamps': The Emergence of Chinese Local People's Congresses as Supervisory Powerhouses", *The China Quarterly*, No. 171, 2002, pp. 724-740.

⁴⁷ www.chinaelections.org; *China Daily*, 4 March 2002, p. 4; more recently, the work report of a county-level court in Shaanxi province was also rejected by the local congress, although the reasons for this are still unknown. Cf. *Xinhua*, 30 January 2005.

⁴⁸ *Zhongguo zhouskan*, 17 September 2004.

provides the foundation for establishing a mechanism of citizen participation in the process of drafting laws and regulations. Since then, various forms of participation have emerged, such as collecting the opinions of administrations and experts, publishing initial drafts in order to receive public feedback, opening up debates in the people's congresses to the public or "auditioning" members of the public.

The last form of participation mentioned was first developed on an experimental basis in Guangxi in 1998. A year later, the people's congress of Guangxi autonomous region enacted some "rules on organising auditions in the regulation-drafting process." Other localities, such as Shenzhen municipality, Guangdong province and Wuhan municipality, later promulgated similar rules, establishing various citizen audition procedures. In 2004, around ten additional localities experimented with citizen auditions, but no national regulations on public auditions held during the process of drafting laws and regulations have been drawn up so far.⁵⁵

The main weaknesses of the current consultation system are twofold: on the one hand, there are no clear criteria determining the segments of society that must be auditioned; and on the other, auditions are held to boost the democratic legitimacy of the local people's congresses, but their impact on the drafting process has actually been minimal. Nevertheless, citizen auditions are bound to become more common as the drafting process becomes more and more complex and technical and requires more direct input from citizens, in particular the segments of society that are most directly affected by the draft laws and regulations debated by the people's congresses. To some extent, auditioning the public is a direct illustration of the "scientific government" that Hu Jintao has ambitions to put in place. But it is also indirectly aimed at addressing the public's demand for more accountability and democracy and at compensating the lack of democracy and openness in the electoral system to some degree.

In order to underscore the supervision of the deputies exerted by the voters, several cases of recall attempts have been made public in the last few years. In August 2003, for example, the *China Daily* reported two cases where groups of voters had submitted letters to the standing committee of the people's congress of their constituency asking for their delegate to be recalled for having "failed to reflect the will and interests of the people in their electoral districts."⁵⁶ The article does not tell us whether these two deputies were, in fact, eventually recalled. Nevertheless, it illustrates the growing pressure exerted by the citizens on the deputies who are supposed to represent them.

All in all, the local people's congresses have noticeably increased their power since 1979. They have developed their own character based on the institutionalisation of the procedural role they have acquired within the Party-state apparatus. Despite the

⁵⁵ Interview with an NPC official, January 2005.

⁵⁶ 61 voters from Zhuzhou's Shifeng district in Hunan and 33 voters from Shenzhen's Nanshan district in Guangdong, *China Daily*, 9 August 2003, p. 3.

lack of comprehensive information and detailed surveys, we can conclude that the lower the level of the congress is, the more likely it is to pass unexpected – i.e. autonomous – decisions. But at the same time, the way that the NPC operates, highly visible inside and outside China, remains a model, a reference for every local people's congress. Moreover, in order to expand their power, local people's congresses have strived for the guidance and assistance of higher-level congresses, losing vertically the autonomy acquired horizontally.⁵⁷ And as we are going to see now, while this model is more tightly controlled by the CCP, as the local assemblies and their leadership also are, the NPC and in particular its Standing Committee have become a power *locus* within the Party-state block.

The NPC: a power locus, but not a power centre

More than any local people's congress, the NPC is a two-tier institution. Held every March for two weeks, the NPC plenary session has become a public stage, a forum at which local delegates speak out more and more candidly about the problems encountered in their constituency; it formally votes on a number of important work reports, laws and constitutional amendments and it elects senior state leaders; through voting it can express its degree of approval or disenchantment with a particular decision. Yet despite being a gathering of around 3,000 delegates, this annual assembly cannot really influence the drafting process of the law. Moreover, its initiative power is much more corseted than that of the local congresses. For instance, a group of deputies may not propose an outside candidate for a position in the central state or government apparatus. More importantly, perhaps, the NPCSC has concentrated most of the real powers of the NPC, making many more decisions than the plenary session, running an expanding bureaucracy and preparing the agenda of the latter.⁵⁸

⁵⁷ Kevin O'Brien & Laura Luehrmann, "Institutionalizing Chinese Legislatures: Trade-offs Between Autonomy and Capacity," *Legislative Studies Quarterly*, 1998, Vol. 23, No. 1, pp. 91-108.

⁵⁸ The following development is inspired by my article, "The Relationship between the National People's Congress and the State Council," op cit., pp. 46ff. Cf. also Kevin O'Brien, *Reform without Liberalization. China's National People's Congress and the Politics of Institutional Change*, New York: Cambridge University Press, 1990. Murray Scot Tanner, *The Politics of Lawmaking in Post-Mao China: Institutions, Processes and Democratic Prospects*, Oxford: Oxford University Press, 1998. Murray Scot Tanner, "The Erosion of Communist Party Control over Lawmaking in China," *The China Quarterly*, No. 138, June 1994, pp. 381-403. Murray Scot Tanner, "How a Bill Becomes a Law in China: Stages and Processes in Lawmaking," *The China Quarterly*, No. 141, March 1995, pp. 39-64. Quanguo renda changweihui bangongting yanjiushi (Research Office of the General Office of the NPC Standing Committee), *Zongjie tansui zhanwang-bajie quanguo renda gongzuo yanjiu baogao* (General Conclusions, Investigation and Perspectives-research report on the work of the 8th NPC), Peking: Zhongguo minzhu fazhi chubanshe, 1998, 304 pp. *Renmin daibiao dahui gongzuo quanshu* (Encyclopaedia of the Work of the National People's Congress), Peking: Falü chubanshe, 1998. Zheng Shiping, *Party vs. State in Post-1949 China: The Institutional Dilemma*, Cambridge: Cambridge University Press, 1997.

1) The NPC plenary sessions

The main powers of the NPC plenary sessions involve debating and voting, but there is a very limited range of decision-making power. In the time allocated to them, NPC delegates cannot expect their work to have a major impact on the decisions or laws that they are supposed to approve. Some minor changes in the State Council work report have been introduced as a result of the pressure exerted by the majority of deputies, but the latter are not provided with enough information to play the role of a real parliament, in particular in financial affairs, and it is precisely this supervision that is the basic mission of every national representation. In China, delegates are given a simplified version of the draft budget; the detailed one is reserved for Standing Committee members, the Financial and Economic Affairs Committee and the NPCSC Commission for Budget Affairs (established in 2000).

Every plenary session is the occasion for delegates to submit motions (*ti'an* or *yi'an*) to the NPC, and the number of these motions has increased rapidly over the years. However, according to official NPC reports, only a modest proportion of the problems raised in the motions are "solved or basically solved" by the government (27% for the years 1993-1998).⁵⁹

Inspection missions by NPC deputies have also become more frequent in the last decade or so, attracting the attention of the government and the public to a growing number of difficult issues. The concrete impact of such missions has remained frustrating, though. In other words, as Kevin O'Brien has convincingly demonstrated, the NPC delegates are more "remonstrators" than they are inspectors.⁶⁰

As regards voting, the NPC deputies have shown an increasing interest in this power since they can send a direct and anonymous message to the central Party-state leadership through it. Clearly, a unanimous vote is something of the past. However, opposition voting has remained an act of a minority; to date, no law or decision has been opposed and no leader defeated by the NPC plenary session (this is not the case for the NPCSC, mind you; see below).

Certain bills have been hotly contested. The best-known examples are the Education Law and the Central Banking Law in 1995 (opposed by 26% and 32% of the NPC respectively), and the chief procurator's work report in March 1998 (45%, and to date the highest rate of "no" votes, triggered directly by a surging crime rate).

Votes on appointments have been less negative on the whole. In the aftermath of the 15th Party Congress (September 1997), which consolidated Jiang Zemin's powers, March 1998 was, as we have just seen, a moment of freer expression inside and outside the NPC. At the time, Li Peng was elected NPC chairman with the support of only 85.5% of the delegates, while Han Zhubin, a former minister of railways,

⁵⁹ Murray Scot Tanner and Chen Ke, "Breaking the Vicious Cycles: The Emergence of China's National People's Congress," *Problems of Post-Communism*, Vol. 45, No. 3, May-June 1998, pp. 34-37.

⁶⁰ O'Brien, "Agents and Remonstrators," op. cit., pp. 365ff.

was elected general procurator with only 1,919 votes (65% of the total number), to date the lowest confirmation rate ever registered and explained by the candidate's obvious lack of legal expertise. The election results were more consensual in March 2003, although Zeng Qinghong's election as Vice-President was "only" endorsed by 85.54% of the NPC, a clear indication – in China – of his lack of popularity, at least among the Party-state elite, and the result of his links with Jiang being too close.

A new development occurred that year: although the election of top officials remained based on the principle of a single CCP-recommended candidacy, some delegates dared to write another name on their ballot sheet for the first time. For instance, while Jiang Zemin was re-elected Central Military Commission chairman, Hu Jintao, who was not a candidate, received 36 votes (he was re-elected CMC Vice-Chairman the same day), and Zhu Rongji got 2 votes.⁶¹

These rules of the game have encountered severe limits. For one thing, the number of ballots received by the bills and the leaders are not published in the mainland China press. This data is reported in Hong Kong for outside consumption, in other words to underscore the pluralistic features of China's one-party system. The other characteristic of these votes is that, despite a gradual increase in contesting votes, genuine opposition (i.e. the votes against the candidate) has rarely been higher than 20%. An important reason for this is that the NPC leadership lobbies the delegates in order to secure adequate support for every decision. This lobbying is facilitated by the fact that two thirds of the deputies are CCP members and thus subject to Party discipline.

As long as the Party and the law do not expressly allow several candidates to run for election, the voting power of the NPC delegates cannot go beyond these frustrating limits. This does not mean that government decisions and choices will always continue to be approved; sooner or later, as at the local level, some of them will be vetoed. However, it remains to be seen whether these rebuttals will have practical consequences for the policies and operation of the Party-state.

2) The Standing Committee of the NPC

Being much smaller (with 175 members since 2003) and more professional in nature, the NPCSC has managed to take a more active part in certain activities undertaken by the State. Its membership is closely intertwined with the membership of the NPC specialised committees (around 70% of the former belong to the latter). Its scope of intervention is concentrated in two areas: 1) law-making, and 2) supervision of the government and the judiciary.

Every bill must now go through a rather institutionalised process of discussion and formal approval, which has contributed to an increase in the NPCSC's influence.

⁶¹ Jean-Pierre Cabestan, "The 10th National People's Congress and After. Moving towards a new authoritarianism, both elitist and consultative?", *China Perspectives*, No. 47, May-June 2003, pp. 8-10.

Since 1985, the NPC has been requested to delegate the competence to enact national regulations or quasi-laws (*tiaoli*) to the State Council, these mainly being aimed at introducing economic reforms with additional flexibility. But in the last decade or so, spurred by China's accession to the World Trade Organization, the NPC (and the NPCSC in particular) has played a growing role in the law-drafting process.⁶² The 2000 Law on Law-making has also widened the scope of the law *vis-à-vis* the domain covered by the government regulations.⁶³ To be sure, 70% of the bills originate from the State Council and in particular its Legislative Bureau (*fazhiju*),⁶⁴ but a growing share of the remaining 30% is drafted by the NPCSC Legislative Affairs Commission (*fazhi gongzuo weiyuanhui*, not to be confused with the NPC Law Committee, *falü weiyuanhui*, which is much less influential, at least in the drafting process) or with its participation. Since 1998, other specialised committees of the NPC have also acquired more say in the drafting process, forcing the State Council's agencies to communicate with them better before the bill is submitted to the NPCSC for approval. In the event of persisting disagreements, the NPC chairmanship can keep the bill in question on hold. This situation only occurs if the Party leadership is divided itself, though, since the agenda of every NPCSC session must be approved by the CCP Politburo.

Such a situation emerged in 1986 when Zhao Ziyang's State Council pushed for the newly drafted Bankruptcy Law to be passed. Although the Politburo had approved the law "in principle," a consensus on that matter was far from reached in the Party leadership. Zhao managed to force the NPCSC – then chaired by the conservative Peng Zhen – to vote on the bill. A slight majority of NPCSC members voted against the bill for the first time (56 were against it and 54 were in favour of it). A watered-down version of the law was eventually approved by 90% of the SC members in December 1986. A similar but reversed manifestation of bad temper occurred in July 1989 when the Ministry of Public Security submitted a bill on public demonstrations. A slim majority of frustrated reformist SC members opposed it (56 were against it as opposed to 54 in favour). Three months later, however, a slightly revised version of the bill was unanimously passed by the same SC members.⁶⁵

Since 1989, to our knowledge, only one bill has failed to gain the approval of the NPCSC: the Highway Law in April 2000 (77 yes, 6 no, and 42 abstentions; 78 votes were required to pass the law). The opposition was fed by the concern expressed by

⁶² Perry Keller, "The National People's Congress and the Making of National Law," in Jan Michiel Otto & Yu Wenli (eds.), *Law-Making in the People's Republic of China*, The Hague: Kluwer Law International, 2000, pp. 75-90.

⁶³ This point is actually debatable since the Law on Law-making positively defines and limits the scope of the law. Nevertheless, this law improves the situation compared to the one created by the 1985 decision.

⁶⁴ Li Shishi, "The State Council and Law-Making," in Otto & Yu (eds.), *Law-Making in the People's Republic of China*, op. cit., pp. 91-104.

⁶⁵ Murray Scot Tanner and Chen Ke, "Breaking the Vicious Cycles," op. cit., p. 39.

the localities at seeing highway toll fees, then levied by the local governments, abolished. This decision is interesting since, more so than political divisions, it underlines a centre-periphery divide in which the NPCSC, although dominated by retired leaders residing in Peking, echoed the interests of the basic NPC members and the localities. It remains to be seen whether this vote will herald a new trend and a clearer assertiveness on the part of the NPCSC, as a bastion of local interests.⁶⁶

The other area of NPCSC influence is oversight of the government and the judiciary. This task remained very sketchy for a long time. Today, the NPCSC is aiming to supervise three particular items: the national budget, local regulations and the activities of the courts. Since 1999, the financial oversight of the NPCSC over the state budget has been strengthened. A Commission for Budget Affairs (*yusuān gōngzuò* *wéiyuānhuì*) was established under the Standing Committee and empowered to scrutinize the budget before, during and after its examination by the NPC plenary meeting. Consisting of financial experts, this new commission assists the NPC Financial and Economic Affairs Committee in examining the detailed budget proposals aggregated by the Finance Ministry. This is done one and a half months before the NPC plenary meeting takes place. The 1999 regulations therefore set ambitious goals, and the reform only gradually materialised. In 2000, the Finance Ministry managed to submit aggregate budget tables concerning four ministries to the NPC; the following year, these budget tables included twenty-six ministries. To be sure, the State Council continues to resist this reform. It does not fully co-operate with the new commission, refusing to provide detailed information or to send top officials summoned by the commission to appear before the NPCSC. The new regulations also remain too vague in many areas to force the government to fully report to the NPC on every adjustment (*tiaozheng*) or change (*biāngēng*) in the budget between two NPC plenary sessions.⁶⁷

This reform has nevertheless played a part in changing the mindset of both the NPC and the State Council. Increasing the financial control of the former over the latter has been a reform that is

established to perform its responsibility involving oversight of the law. It could not and did not annul any executive or local regulation contradicting the Constitution or the law.

As far as control of the constitutionality of laws and regulations is concerned, the NPCSC has been debating the pros and cons of setting up a special body in charge of that task since the late 1990s.⁶⁸ As the NPC is empowered to control *ex ante* the constitutionality of the laws it promulgates itself, the option which has the best chance of being adopted is the creation of a constitutional committee under the NPC or the NPCSC specially responsible for this task.⁶⁹ But so far, this decision has remained on hold as a result of persistent divisions among NPC leaders and legal experts.

The 2000 Law on Law-making introduced a "passive procedure" for examining regulations. Two cases must be distinguished here: requests for scrutiny and proposals for scrutiny. The former can be decided by the government or the judiciary: the NPCSC must make a statement on the regulation questioned. The latter can be submitted by a social organisation, an enterprise or even a citizen; the NPCSC may or may not initiate the procedure. To date, the passive procedure has been scarcely used. Cases will probably increase, however, in particular as a result of the precedent created by the Sun Zhigang affair. Sun was a migrant worker who was arrested in Canton in May 2003 because he was unable to prove his identity officially; he died in detention a few days later after having been beaten by other detainees. Three professors of law from Zhongshan University subsequently sent a letter to the NPCSC asking it to check the constitutionality and legality of the regulations that allowed the police to arrest Sun. However, before the NPCSC had initiated the examination procedure, the State Council, and actually Wen Jiabao himself, decided to abrogate the incriminated regulations.⁷⁰ This case actually underlines the fact that the State Council's Legislation Bureau has so far been the most active organ of all in abrogating illegal local regulations.⁷¹

The NPCSC can still take the initiative to examine a local regulation that it suspects is illegal, but in view of the large number of local regulations that are sent to the NPC for registration (*bei'an*), it faces a daunting task, one that specialised committees have been reluctant to take on.⁷² For this reason, the Legal Work Commission set up a division in May 2004 specially designed for screening local regulations. While the activities of this new body have been expanding, the State Council's

⁶⁸ Michael William Dowdle, "The Constitutional Development and Operations of the National People's Congress," *Columbia Journal of Asian Law*, Vol. 1, No. 1, Spring 1997, pp. 1-125.

⁶⁹ Jiang Jinsong, *The National People's Congress of China*, op. cit., pp. 280-284.

⁷⁰ Kristen Looney, "Death of Sun Zhigang Challenges Rule of Law in China," 20 May 2003, www.chinaelections.org.

⁷¹ Between 1998 and June 2002, this bureau imposed changes in 134 of the 335 local regulations of which it was notified. Cf. www.chinalaw.com.gov.cn.

⁷² Jiang Jinsong, *The National People's Congress of China*, op. cit., pp. 261-263.

Legislation Bureau has actually continued to play a key role in checking the legality of local regulations.

Supervision of the judiciary has proved harder to put in place. Anchored in Article 104 of the Constitution, this constitutional power to supervise the courts and the procuratorates has been interpreted as the authority to supervise the handling of particular cases by the judiciary. However, so far, this power has had little impact on the work of the courts and procuratorates. Every year, over ten thousand complaints about particular judgements are sent to the NPC and then forwarded by the NPC Internal and Judicial Affairs Committee to the People's Supreme Court, which considers most of them unfounded.⁷³ Growing judicial corruption led the NPC and in particular Li Peng, then its chairman, to attempt to flesh out this oversight power in 1999. In August, the NPCSC discussed a "draft regulation on the supervision of major misjudged cases and illegal activities of judges and procurators." However, due to local resistance as well as the corruption of the people's congresses themselves, this text was not promulgated and the reform consequently remained in limbo. Still, it has strengthened the contacts between the NPC and the judiciary, forcing the latter to report more frequently to the former on their activities.⁷⁴

Since the late 1990s, the NPCSC has been striving hard to impose an institutionalised system of reporting and discussion (*shuzhi pingyi*) on the State Council and the judiciary. It has concentrated on improving the government's accountability, in particular in budgetary affairs. Its proximity from and its close relations with the central leadership of the Party have impeded its ambition to become a real parliament, though. In other words, even though the NPCSC is obviously eager to become a true parliament and is ideally placed within the people's congress system, its dependence upon the CCP and its lack of democratic legitimacy will remain the two major obstacles to any consolidation of its powers and, as a consequence, of the NPC's role in China.

IV. Conclusion

The people's congresses have become an important part of the political institutions of the PRC. In the last quarter of a century, their role has unquestionably expanded, particularly in debating and participating in the decision-making process for government policies, laws and regulations. Through more competitive elections, grass-roots congresses have promoted new blood that has partly percolated up the system to the NPC, the membership of which reflects the new characteristics of the Party-state elites to a large degree. As an institution, the pyramid of people's congresses has developed its own vested interests – which is healthy – and tried hard to enhance its powers, using as much as possible the prerogatives granted by the Constitution and

⁷³ Dowdle, "The Constitutional Development," pp. 108-111.

⁷⁴ *Wenhuibao*, 25 August 2000, p. A5; Jiang Jinsong, *The National People's Congress of China*, op. cit., pp. 270-274.

the law as well as the legitimacy they feel they embody as representatives of the people. For both domestic and international reasons, the Party leadership needs to support these claims. On the one hand, they contribute to bringing in more expertise and popular feedback on the decisions it makes. On the other, they provide the current political system with a supplementary or added-value legitimacy vis-à-vis the people who, at home and abroad, question the opacity of the regime and its lack of democracy.

The gradual and partial consolidation of the people's congresses has triggered new demands both from within the congresses and from society. The 2004 reform of the direct election system, the current discussion on establishing a constitutional committee, and the pressure exerted by the congresses to gain more control over public finances appear to be major indicators of possible future changes. And in May 2005, some non-CCP vice-chairmen of the NPC called for a deeper reform of the people's congresses, suggesting that the party groups (*dangzu*) within the congresses should be abolished and the number of CCP member and leading cadres – 75% of provincial and city congress deputies today – should be drastically reduced. So far, however, Hu Jintao does not seem to have bought the idea.⁷⁵

More generally, some segments of society remain frustrated by the scope and pace of these measures and are pushing for a more dramatic reform of the people's congresses, both in terms of their elections and powers. In 2002 some reformists, such as Cao Siyuan, suggested expanding the system of multiple candidacies for senior government positions (such as that of the premier) to the NPC.⁷⁶ There's little chance of seeing such a change take place, though. Since then, Cao and others have radicalised their demands, proposing a quasi-democratisation of the political system. Cao, in particular, has ambitions to turn the NPC into a professional legislature that is smaller and meets more frequently, to make NPC proceedings public and to place the main administrative powers of the government in the hands of an elected president who would work independently from the Party.⁷⁷

Cao has touched upon the most sensitive point of the current regime here. Having promoted the role of the Constitution in the spring of 2003, Hu Jintao set strict limits on any political reforms when, in September 2004, he consolidated his power by replacing Jiang Zemin as Chairman of the CMC. "Democracy is a dead end," Hu said at that time.⁷⁸ In such circumstances, there is no way that the people's congresses will be better able to represent the voters who are supposed to elect them and eventually emerge as parliaments capable, in the localities as well as at the national

⁷⁵ *Zhengming*, May 2005, pp. 11-12.

⁷⁶ *SCMP*, 2 March 2002, p. 1.

⁷⁷ Cao Siyuan, *Zhengzhi wenming ABC – Zhongguo zhengzhi gaige gangyao* (ABC of Political Civilisation – A Programme for Chinese Political Reform), New York: Cozy House Publishers, no date (probably 2003). The June 2003 issue of *Chinese Law and Government*, edited by Andrew J. Nathan, published the English translation of a key chapter of Cao's book.

⁷⁸ *RMRB*, 15 September 2004.

level, of exerting checks and balances on the power of the government, or in fact the Communist Party. But if the Party decides or is forced to initiate true political reform, the people's congresses will be the main institutions to benefit from that, as they will become the depositaries of the will of the majority, the will of the people. By then, they will probably have dropped the word "people" from their name, and the "People's Republic" will probably have metamorphosed into the "Republic of China."