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Institutional Development of the Chinese National People's Congress (1978-89): Intellectual Perspectives

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by

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Abstract

This research focuses on the institutional development of the National People's Congress (NPC) in the period 1978-89, which was approximately the initial decade of the Post-Mao period of Chinese politics. For the NPC, this period saw the sharpest institutional development, which thus far remains under-researched.

The main research question is how and why the NPC institution has developed. In other words, the research aims to illustrate the mechanism and factors that shape the NPC's unique institutional characteristics. This study contributes to the existing literature that focuses largely on describing *how* the NPC institution changes by exploring *why* the NPC has acquired its many particularities.

The main research question is answered from a new perspective external to the institution itself, which is guided by a theoretical framework centred on the 'reform influencers' who had a direct linkage to, or participated in, the NPC institutional reform. It is argued that clashes of consciousness (involving Marxist intellectual ideas, liberal democratic ideas, and domestic intellectual ideas such as nationalism) played an important role in the post-Cultural Revolution political reforms. Accordingly, the primary concern of the research is how the diversified consciousness, or the 'intellectual background', of the reform participants has influenced the institutional development of the NPC.

Empirically, this study pursues the following issues: (1) who are the reform influencers and which social groups they represent; (2) how influencers' diversified intellectual background shaped their preference in reforming the NPC institutions; (3) how the diversified preference finally shaped the main characteristics of the NPC institution.

Based on the study of four major groups of influencers associated with NPC reforms, a series of 'principles' are identified in the concluding chapter as being responsible for shaping the NPC's many unique institutional characteristics from an intellectual perspective.

The new perspective analysed in this thesis represents an innovative attempt to study Chinese legislative development by linking the institutional development with its external 'environment' – the reform influencers and their conflicting intellectual ideas. Furthermore, the empirical analysis adds new knowledge and understanding of the NPC development to the current literature by a) studying those actors (e.g. intellectual elite and wall-posters), whose linkages to the NPC institutional development have not been subject to systematic analysis; and b) examining new sources of data, including those established through interviews with NPC deputies in the 1980s and surveying the compilation of the wall-posters' underground publications.

Acknowledgement

My life has never been that tortuous and suffering than in the recent three years, and I am pretty sure that I would have been crushed by pressure if was not surrounded by the people whose generous assistance encouraging me to keep my research.

I must highlight my supervisors, Professor Lord Norton and Dr. Dai. This thesis, including its structure, methodology, and theoretical framework benefits a lot from their kind suggestions and advice; they also kindly read through every chapter, pointing out mistakes, even grammatical ones and typos. This thesis also benefits from assistance in China, particularly during my field work. My appreciation goes to the interviewees for providing me with many valuable ideas and primary evidence that constitute an important research contribution of this thesis.

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Abbreviations

BR	Beijing Review, China's official English news weekly
CPC	The Communist Party of China
CPPCC	Chinese People's Political Consultative conference
CR	The Proletariat Cultural Revolution
CUP	*Compilation of Mainland China Undergraduate Publications (Dalu Dixia Kanwu Huibian):* a twenty-volume compilation of major wall poster journal articles appeared in the wall-poster movement
KMT	Kuomintang; literally means the Nationalist Party that formally controlled the political power since the end of the Warlord period in 1927 and fled to Taiwan after defeated by the CPC in 1949
LPC	Local People's Congress
NILDIE	Nationalist influenced liberal democratic intellectual elite
NPC	National People's Congress
NPCSC	National People's Congress Standing Committee
OMIE	Orthodox Marxist intellectual elite
PCs	People's Congress system
PMB	Private member's bill
RCI	Rational Choice Institutionalism
RLDIE	Radical liberal democratic intellectual elite
RMRB	*Renmin Ribao* (People's Daily), published under direct supervision of the CPC Central Committee; most crucial official daily newspaper
The Third Plenum	The Third Plenum Conference of the Eleventh Central Party Committee (1978)
WEH	*Shijie Jingji Daobao* (World Economic Herald). A widely influential weekly newspaper published by reform activists in Shanghai Social Science Academy (1980-1989); it was forced to close in the 1989 crisis for being too 'active'

Table of Contents

List of Figures

List of Tables

Chapter 1. Introduction

Legislatures are almost ubiquitous;[1] for China, the first attempt at establishing a legislature occurred before the end of China's last empire. Following the Communist Party of China's (CPC) establishment its own regime in 1949, it immediately started to instigate its own legislature, which resulted in the soviet style National People's Congress (NPC) of 1954.[2] As its name illustrates, that institution is created to institutionalise the sovereignty of all people. However, in sharp contrast, the NPC is widely regarded as a 'rubber stamp', which is a crucial reason that China has been labelled as an authoritarian state.

Following rapid economic development, urbanisation, and the resulting increase in the size of the middle class, it has become increasingly difficult for the ruling CPC to maintain its authoritarian ruling strategy.[3] Such difficulties highlight the NPC's crucial role in the democratisation of Chinese politics, which therefore reveals the importance of demonstrating the mechanisms of the NPC's institutional development. Specifically, the importance of the NPC comes from the fact that, regarding the four major institutions of Chinese politics (shown in section three of this chapter), it was the only institution that has the power and obligation to link the isolated politics to outside participants. In other words, the NPC is the only democratically elected institution linking the broader society to government; other institutions were established by either restricted elections (e.g. the party committee is elected by party members), or appointments (e.g. government officers). Meanwhile, compared with other institutions, staff members and deputies of the NPC have a greater opportunity to directly contact with the masses;[4] they also have obligations to link, reflect, and fight for their interests.

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[1] According to the Annex of the *Global Parliamentary Report* released in 2012, only four countries or regimes in the world have no legislature.

[2] A detailed introduction is in chapter five.

[3] For recent studies of this topic, see Jie Chen, "Attitudes toward Democracy and the Political Behavior of China's Middle Class," in *China's Emerging Middle Class Beyond Economic Transformation*, ed. Cheng Li, (Washington, D.C.: Brookings Institution Press, 2010). pp. 334-58; Hai Ren, *The Middle Class in Neoliberal China: Governing Risk, Life-Building, and Themed Spaces,* (New York: Routledge, 2013). pp. 26-34; Jie Chen, *A Middle Class without Democracy: Economic Growth and the Prospects for Democratization in China,* (New York: Oxford University Press, 2013). Chapter 3.

[4] Because of the strict division in China between the people who controls political power and people who not, the term 'masses' refers to those people not having, and thus having to subordinate to those people who have, political power.

This particularity illustrates that reform of the NPC is the most obvious way of democratising Chinese politics. [5]

I. Research question

The research question is by what mechanism the NPC's unique institutional characteristics (e.g. its huge number of legislators) were shaped during its institutional development in 1978-89 period. The importance of answering this question comes from pioneering researchers' overwhelming focus on describing the NPC's institutional changes, which are insufficient to shed light on revealing the mechanisms of the NPC development. A most salient outcome of that insufficiency is the weakness of the pioneering research to explain the reason for the NPC's imbalanced institutional development: some aspects of which have grown rapidly, while some largely remain unchanged.

Based on the findings of the reviewing chapter, this thesis claims that the main research question can be answered only by taking a new perspective external of the institution itself. In doing so, the corresponding theoretical framework focuses on the people having a direct linkage to the NPC institutional reform. As consciousness conflicts were the major theme of the post Cultural Revolution (CR) political reform, the primary concern of the research focuses on how the diversified consciousness, or the 'intellectual background', of the reform participants affected the NPC institutional development.

This main question is then answered by the empirical study having as its theme the following topics: (1) who are the reform influencers and how they can be grouped; (2) how influencers' diversified intellectual background shaped their preference for developing certain aspects of the NPC institutions; (3) how the diversified preference finally shaped the main characteristics of the NPC institution.

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[5] A non-violent and non-radical political democratisation depends on an active and independent legislature that acts as a bridge in linking the masses with the elite, and the society with politics. For example, Nathan believes that in order to maintain social stability, the primary task for the authoritarian CPC is to strengthen the "input institutions", by which the political efficacy of the commons can be raised. See Andrew Nathan, "Authoritarian Resilience " *Journal of Democracy,* 14, no. 1 (2003): 6-17. Clearly, the People's Congress as the representative agency is the most suitable institution that the outside demands can be inputted into the political systems.

II. Institutional context: the NPC in the Chinese political system

The NPC is China's central state legislature; having only one chamber and consisting of almost three thousand deputies, it is now the World's largest legislature. Also at this level are other political institutions, including the CPC Committee, the Central Government, and the two judicial institutions (the Supreme Court and the Supreme Procuratorate). Their relationship, according to the Constitution, should be that (1) the central government and two judicial institutions are accountable to the NPC; (2) the party leads the government by dominating the NPC. Those designs make it quite similar to the Parliamentary system (Parliament Sovereignty, ruling party controls the executive) rather than the Presidential system. However, in its operation, (1) the majority of policies are made in the Central Party Committee, not in the NPC, which not only turns the NPC into a policy convertor but also makes the Central Party Committee an independent institution of politics having a higher authority than the others. (2) Sometimes the party directly leads the government in a particular policy despite the institutional setting in the Constitution that the wishes of the party should be indirectly fulfilled through its control over the NPC. (3) The 'government accountable to the legislature' principle remains largely on legal provisions, not in practice. (4) The NPC has a relatively greater power in making the two judicial institutions accountable; however, the latter are still under a more direct control of the party's legal-political committee (see the 'mouth' system introduced in chapter eight).

Figure 1: *Horizontal structure of the state level political institutions*

The 'should be' structure
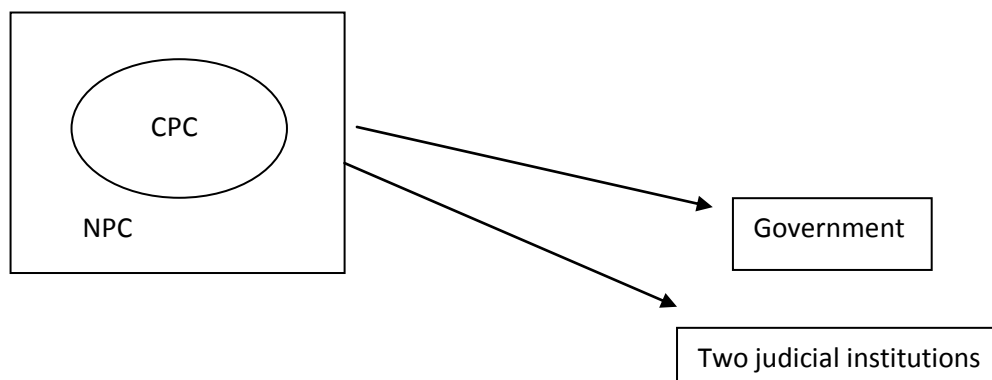
The relationship in practice

Chart is made by author
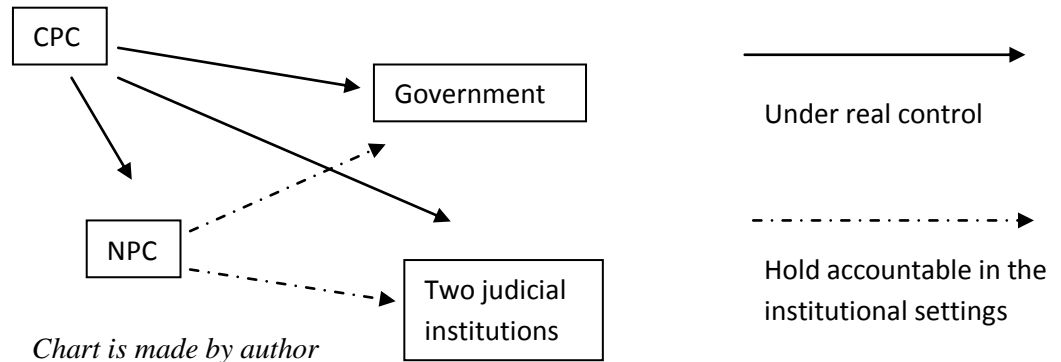
Vertically, due to China's huge demographic and geographic size and diversity, there are four layers of local authorities below the Central level (Province, City, County, Township, and Village). Each layer has the same major political institutions, and their inter-relationship largely copies the abovementioned central level. For the legislative system, the NPC and other four local level People's Congresses, consist of the entire People's Congress system (PCs). Besides the similarities, three institutional characteristics are worth highlighting: (1) the bottom (village) layer is under local self-governance, but not an administrative layer, and thereby has no People's Congress and the resulting government.[6] (2) As the People's Congress of each layer is accountable to the voters but not its higher layer PC, the latter can only guide and direct the works of the lower PC (instead of the 'control - under control' relation in the vertical structure of the party and the Government). (3) The Local People's Congress (LPC) had no Standing Committee until 1979.

Because of the NPC's huge number of deputies and its unicameral settings, a pyramid structure inside the NPC is created to secure efficiency. The NPC Plenary Session consists of all deputies; correspondingly, its session is the shortest: almost two weeks per year. Its deputies are elected by the deputies of each provincial Congress at five-year intervals (which means the constituency of each NPC deputy is his or her province). No individual or organisation can dissolve the congress before the next election, and because the elections are non-direct, the masses have *de facto* no power to withdraw incompetent deputies. A Standing Committee is established to fulfil the functions of the plenary session during its close-session period. The Standing Committee deputies are elected by, and come from, the plenary session deputies. It normally has approximately

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[6] China's stratified administrative system ends at township People's Congress and the township government. Below the township level are villages. Each village has an elected 'villagers' committee'. The villagers' committee is not a layer of local administrative institution but a local self-governance organisation.

150 deputies, many of which are now full time. Standing Committee meetings are held bimonthly and are seven-day long. Inside the Standing Committee is a crucial core named the Chairmen's Council. Its functions, despite a long list provided by the NPC website, can be concisely described as the 'agenda setting' (such as fixing the conference date, length, and agenda) and the 'doorkeeper' that decides which deputies' private members bills (PMB) [7] can be recruited into the policy process and the department which should deal with them.

There are currently nine special committees in the NPC, all of which are under the leadership of the Plenary Session; however, as the latter lasts only two weeks, committees are *de facto* under the control of the Standing Committee and its Chairmen's Council. As a standing organisation, the work of the Standing Committee (and its Chairmen's Council) is also supported by the administrative organisations (the general office and its subordinating offices) and the five working committees. The chart below outlines the relationship of those organisations.

Figure 2: *Organisational structure of the NPC*
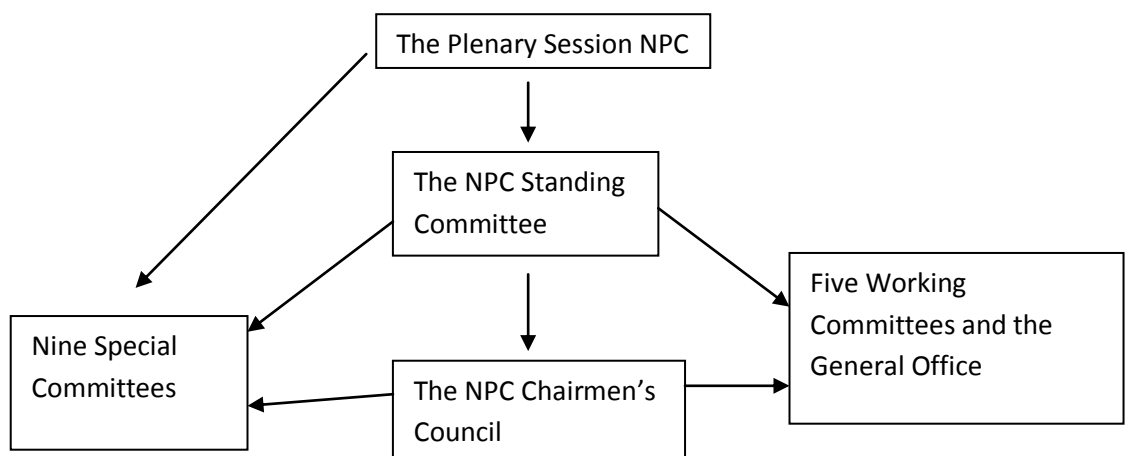
Chart by author

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[7] PMB is a form of bill which appears in the regimes having parliamentary legislative system; it refers to the bills introduced by MPs who are not government ministers with the purpose to change the law. See, for example, the PMB in UK parliament: http://www.parliament.uk/about/how/laws/bills/private-members/. In this research the use of that concept refers to those bills or promotions introduced by NPC deputies (either in a group or individually). This term is used to distinguish them from the bills introduced by the government, the Party, or other political institutions.

III. Historical context: the 1980s as the crux of Chinese political reform

The period of the empirical analysis is 1978-1989, during which political reform in China reached an apogee. Taking the Third Plenary Conference of the Eleventh CPC Committee (The Third Plenum) in 1978 as a 'watershed', the history of Communist China's political development can be divided into two periods. In an unprecedented manner, many reforms were seen during the latter period since 1978, which resulted in huge social, economic, and even political changes.[8] On the other side of the time line, from 1986 until 1989 saw the reforms going 'out of control', resulting in serious mass demonstrations against authority. After the regime restored order by force, it clearly became much more cautious in furthering reform, which led to a clear decline of, and even a retreat from, the reform process. The particularity of the 1980s also came from intellectual diversity (a specific study of which is in chapter six). In short, the opening-up policy since the 1980s created a 'door' to foreign ideas; the fall of Maoism and the rise of the new leaders' many newly minted guiding principles further diversified social consciousness. Therefore, the NPC reform in the 1980s was on a foundation consisting of original Chinese thought, Marxist-Leninist doctrines, power holders' new ideas, and, most importantly, many Western liberal democratic claims. All of which resulted in a never seen before diversity.

Looked at in this light, the NPC reforms of the 1980s are a perfect time to reveal the mechanisms of its institutional development. Firstly, as most of the contemporary NPC institutions were established in the 1980s, any further institutional change or reform is on the institutional 'base' created during that ten-year period. Secondly, intellectual diversity is still, and even more salient, in contemporary Chinese society, which highlights the importance of understanding its effect on the NPC institutional changes. Thirdly, as the reforms of the NPC institutions to some extent bogged down after the 1980s, it is crucial to understand the dynamic of the rapid institutional changes in the 1980s, which may help to better predict the NPC's future development.

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[8] The division of two periods is widely accepted and acknowledged as a basic dichotomy of the Chinese politics.

IV. Thesis structure

Following the literature review in chapter two, the methodological chapter (chapter three) establishes the conceptual framework by introducing three basic variables – the function, institutional design, and the intellectual background. This chapter also suggests the use of grounded theory as a research method.

As the key characteristic of the grounded theory, this research does not make any further hypotheses but goes directly to the analysis of the empirical evidence. Chapters four and five focus on the intellectual background and the history of Chinese legislative development prior to 1978. The legislative institutional changes in the period 1949-1978 are highlighted in chapter five, which is also the first attempt to explain the institutional change from a new intellectual perspective (instead of simply listing the institutional changes).

Chapters six to ten comprise the majority of the analysis. Based on a large body of primary evidence, the analysis focuses on how the differing intellectual ideas of the different groups of reform participants resulted in diversified demands on the NPC's specific functions, and how those functions shaped the institutional design.

The concluding chapter reveals the 'principles' behind how the mutual interaction of the diversified functional demands and institutional designs brought forward by the four groups of influencers finally determined the NPC institutional changes in the 1980s. The findings under the new perspective contribute to the establishment of a new exploratory framework with both a strong explanatory capacity and modifiability in responding to the research question. [9]

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[9] 'Explanatory capacity' in the Grounded Theory context is called 'workability', which means to what extent can the new theoretical framework works to explain the empirical evidence; modifiability means to what extent does the framework open to the entering of new data and can be amended accordingly. A framework lacking modifiability is a rigid one, which would be disproved by new empirical findings, rather than being amended by them (detailed discussion is in chapter three).

Chapter 2. The People's Congress system in 1980s China

Introduction

This chapter aims to provide an accurate, objective, and comprehensive overview of research regarding the NPC institutional development. In doing so, this chapter expands its focus from the literature regarding the NPC to the larger scope of the People's Congress system (PCs) which consists of five different layers.

Widely known as a 'rubber stamp', the PCs has received far less academic interest than other Chinese political institutions, particularly the party and the executive. This situation was worsened by censorship that has resulted in a lack of primary data; however, the situation largely changed after the Third Plenum in 1978, which heralded the social-political reforms. Scholars from outside China began focusing on the systematic changes of the PCs, instead of merely delineating the annual plenary session meeting.[10] The relatively relaxed censorship of academic research and the reduced control on ideology contributed to the prosperity of the domestic PCs' research.

Pioneering research can be divided into two categories: descriptive and explanative. Correspondingly, this chapter reviews key literature in three parts; the first two sections review descriptive literature that presents the institutional changes of the PCs by showing their developments and limitations. Descriptive literature normally focuses on the basic variables of the institutional research, which are its function, structure, and behaviour. The third part reviews key literature exploring explanations of the legislative institutional reforms. Overall these encompass a broad range of perspectives, thereby providing a greater explanatory capacity than merely focusing on a single approach.

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[10] Academic research of the People's Congress before the 1980s was largely in a report or correspondence style: they normally reported to readers a series of information, such as its date, procedural, and agenda. Sometimes a concise introduction to the governmental working report was also included. For examples, see Philip L. Bridgham, "The National People's Congress " *The China Quarterly*, no. 22 (1965): 62-74. More importantly, research of the NPC before the period of Deng was quite few.

I. Institutional developments

1.Functional

O'Brien's research provided a checklist of the PCs functions that include the law-making, supervision, representation, and regime support.[11] Based on these, it reveals several functional developments: the NPC had more power to either draft new laws or supervise the drafting process of other institutions of politics; [12] representational function was strengthened as deputies began channelling information to the decision makers;[13] service and allocation responsiveness has emerged and increased, though still a gray area.[14]

In contrast to the four functions mentioned by O'Brien, Dowdle stresses that the PCs' 'institutionalised' functions – the functions confirmed by the Constitution – were merely two: the law-making and the supervising. Although Dowdle's list is shorter than O'Brien's, he also mentions that the representative function expanded rapidly during the 1980s. More importantly, such a rapid development happened without significant institutional support.[15] Dowdle claims that the PCs functional expansion during the 1980 deliberately imitated the institutional designs of the Western legislatures, particularly the 'Westminster parliamentary' model but not the 'US Congress' model.[16] Focusing on the law-making function, Tanner stresses that the pressure from both inside and outside of the political system (the author does not provide a detailed list of such pressure) led to a transition of the power of law-making from the CPC to the NPC,[17] which coincided with a claim questioning the default view that party dominated the legislature and the PCs was merely 'united front' organisation.[18]

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[11] O'Brien, *Reform without Liberalization*. Chap.8.

[12] Ibid. p.163.

[13] Ibid. p.166. Chou mentions the same trend, calling it as "information broker"; see Young Nam Cho, *Local People's Congresses in China: Development and Transition,* (Cambridge: Cambridge University Press, 2009).

[14] O'Brien, *Reform without Liberalization*. p.171.

[15] Michel W. Dowdle, "The Constitutional Development and Operations of the National People's Congress " *Columbia Journal of Asian Law,* 11, no. 1 (1997): 1-125 P. 53.

[16] Ibid. pp. 54, 123.

[17] Tanner identifies three detailed new developments on NPC's law-making function (the fourth development was regarding the State Council): 1) the role of party in law-making decreased; 2) the law-making function of three departments in charge of law-making process has been clearly defined by the 1982 Constitution; 3) NPC and NPCSC became an increasingly influential actor in law drafting. Murray Scot Tanner, *The Politics of Lawmaking in Post-Mao China* (Oxford; New York: Oxford University Press, 1999).pp. 5, 48-49.

[18] Ibid. p.18.

More important than the increase of the law-making power, seeing law-making as a method of public administration was increasingly observable after the end of the CR. According to Seidman, the steadily increased number of laws that needed to be drafted and promulgated in the NPC's law-making-five-year-plan "reflected a recognition that law comprised government's primary tool to make the massive institutional changes"[19] This change can be identified not only quantitatively, but also qualitatively. In Cai's language, the 1980s reform saw the change of law-making from the stage of 'criminal code' to the stage of 'civil code' and 'administrative code', which is compared to a change from "waving a knife" to "waving the baton". According to Cai, the NPC law-making related process before 1980s emphasised class struggle: applying the criminal code to crush the enemy of a different class; however, the purpose of making law after the CR was managing the economic development and civil affairs.[20]

2. Structural

The structure of the PCs also developed during this reform period. Burns suggests that the outcome of the reforms of the political before 1989 was an increase in the institutionalisation of the political institutions (including the PCs).[21] This claim is widely recognised by the research both inside and outside China.[22] The institutionalisation of the PCs structure, according to O'Brien, can be more clearly observed by focusing on its rapidly expanding Standing Committee, reduced average age of deputies (particularly the members of the Standing Committee), and more powers being given to the Plenary Session meetings and committees.[23]

The expansion of the National People's Congress Standing Committee (NPCSC) was highlighted as the most typical characteristic of the PCs structural development. According to O'Brien's detailed survey, several significant structural developments

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[19] Ann Seidman and Robert B. Seidman, "Drafting Legislation for Development: Lessons from a Chinese Project " *The American Journal of Comparative Law,* 44, no. 1 (1996): 1-44 P. 4.

[20] Dingjian Cai, "Fazhi De Jinhua Yu Zhongguo Fazhi De Biange: Zouxiang Fazhi Zhilu (Change and Development of Chinese Legal System: The road to the Rule of Law) " *Chinese Legal Science,* 5 (1996): 3-11; John P. Burns, "The People's Republic of China at 50: National Political Reform " *The China Quarterly*, no. 159 (1999): 580-94.

[21] Burns, "The People's Republic of China at 50: National Political Reform, p.586.

[22] Dingjian Cai, *Lishi Yu Biange: Xinzhongguo Fazhi Jianshe De Licheng (History and Change: The Path of New China's Legal Development),* (Beijing: Zhengfa Daxue Press, 1999)., p.146 ; MacFarquhar believes that the structural development in the LPC has "*begin to assume an institutional life of their own*"; see, Roderick MacFarquhar, "Provincial People's Congresses" *The China Quarterly*, no. 155 (1998): 656-67.

[23] O'Brien, *Reform without Liberalization*., Chap. 7.

were carried out within this period: 1) the size of the Standing Committee was reduced in order to enhance efficiency; 2) its members became full-time; 3) special committees were established; 4) structural supports were increased.[24] However, the NPCSC's rapid structural expansion was in sharp contrast to the slow development of other PCs structures, which resulted in the structural development of the NPC being imbalanced. For example, Tanner mentions that the Standing Committee was given a remarkable emphasis than that of the Plenary Session in the factional struggle of the power holders.[25]

Wormack's research focuses on the LPC's structural expansion in a study of the institutionalisation of the legislative deputy elections and their resulting prospect for democracy. His study identifies several progresses during this session: 1) the 'more candidates than places' principle was widely applied; 2) the tier of direct elections was expanded to the county level; 3) transparency of candidate nomination process was increased in order to secure fairness; 4) other progresses such as a secret ballot were applied. Wormack's study illustrates that those progresses was legally guaranteed by the Electoral Law that was promulgated by the NPC. It was an unprecedented achievement as the NPC started to expand and 'defend' the legislative system by using its law-making power.[26]

Rather than simply depicting the PCs structural changes, scholars of Chinese legislature also attempt at modelling its development, which generates several models that can be immediately divided into two types: (1) the PCs' internal structure; (2) the inter-agency structure showing the structural relationship between the PCs and other political institutions (the CPC is also included).

For the first type, a widely influential and recognised work is by Tanner. According to his study, four models are identified: command model, leadership struggle model, organisational or bureaucratic politics model, and the 'garbage can' model.[27]

The command model does not deny an increase to the PCs' internal structural independence; however, in stressing party controls over the PCs, it refuses the view that the structural development was pushed up by dynamics inside the PCs. The major flaw

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[24] Ibid. pp.149-53.
[25] Tanner, *The Politics of Lawmaking in Post-Mao China* , p.98.
[26] Brantly Womack, "The 1980 County-Level Elections in China: Experiment in Democratic Modernization." *Asian Survey,* 22, no. 3 (1982): 261-77. This article was written in 1982. In fact, this trend remained within the 1980s, such as the promulgation of 1986 LPC Organisation Law.
[27] See,Tanner, *The Politics of Lawmaking in Post-Mao China* , pp.15-29.

of this model, according to Tanner, is to build on a premise that the party was a unified organisation with merely one voice and one mindset, which conflicts with many pieces of empirical evidence. The Leadership struggle model emphasises factional conflict among the power holders. The abovementioned four major political institutions were the arenas for such conflict, and the PCs structure developed through the conflicts. This model, according to Tanner, cannot be a grounded explanation as it *"overstates the centrality of amoral struggles"*.[28] The third model is on the basis of the organisational political theory which, in Tanner's language, *"focused on bureaucratic cleavages and inter-agency tension as a source of bounds on the rationality or coherence of policy-making"*.[29] The 'garbage can' model was developed from the garbage can concept from organisational choice theory that is brought forward by Cohen, Olsen, and March.[30] In stressing 'organised anarchy' as the key characteristic of structural development, this model argues that the PCs structural development had an unclear goal, ambiguous decision making system, and the real reform carrier was not the structure. In other words, this model stresses the PCs staff members' lack of wish and unconsciousness in reforming the institutions; it also stresses that the development was achieved without a clear intention.

Although scholars normally try to avoid showing their adherence to a certain model, preferences are inevitable. For example, O'Brien's study illustrates his (at least) partial acknowledgement of the 'leadership struggle' model by highlighting the great influence of the party veterans who were forced to leave the core of political power and given leadership posts in the NPC that were far less significant than their former posts.[31] In the same vein is the study of Solinger; according to her study of the fifth NPC, the NPC became an arena in which power holders of different opinion groups competed with each other more openly.[32] This chapter highlights a very interesting and crucial 'coincidence': although both foreign and domestic researchers mention the fact that the NPC has turned into a 'nursing home' for party veterans, foreign scholars see it as

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[28] Ibid. p. 21. However, the 'multi-arena' concept in tanner's latter work does not deny that the struggle between the power holders is one of the arenas that facilitated the increase of the NPC functions. Murray Scot Tanner, "Organizations and Politics in China's Post-Mao Law-Making System," in *Domestic Law Reforms in Post-Mao China*, ed. Pitman Potter, (Armonk, N.Y.: M.E. Sharpe, 1994). pp. 74-76.

[29] Cited, Tanner, *The Politics of Lawmaking in Post-Mao China* p. 22.

[30] Michael D. Cohen et al., "A Garbage Can Model of Organizational Choice " *Administrative Science Quarterly,* 17, no. 1 (1972): 1-25.

[31] O'Brien, *Reform without Liberalization*. The author develops this viewpoint in another work, see, O'Brien, "Is China's National People's Congress A "Conservative" Legislature?"

[32] Dorothy J. Solinger, "The Fifth National People's Congress and the Process of Policy Making: Reform, Readjustment, and the Opposition " *Asian Survey,* 22, no. 12 (1982): 1238-75.

evidence testifying the leadership struggle model that those veterans utilised the PCs as their 'base' to launch protests in order to get more power from the party and the Government, whereas none of the scholars in China believe that the 'nursing home' means arena.

Since not a single model perfectly suits empirical evidence, attempts at challenging them can be observed. According to Sun's study, the above four models cannot explain the NPC structural development. According to him, the NPC structural development was a part of the wholesale process of "constitutional soft landing" consisting of structural independence, functional assertiveness, and meaningful representation, in which the NPC structural development, in Sun's language, is an "*institutionalisation in the direction of democracy and new legislative responsibilities.*" [33]

It is worth bearing in mind that the above four models depict only the intra-NPC structure (even the 'leadership struggle model' focuses on the struggle within the NPC). Regarding the studies of the inter-agency structural developments, for example, research shows that the cooperation between the NPC's working committees, particularly the law committee, and the corresponding departments of central government has dramatically increased, thereby refining the process of transforming governmental decisions into laws.[34] The making of the Enterprise Bankruptcy Law and the State-owned Industrial Enterprise Law, as Tanner's two case studies show, were the outcomes of the strengthened linkage between the PCs, the Government, and the party, which was on the basis of the significantly developed inter-agency structure.[35] Those empirical findings facilitated the establishment of the following models.

In general, three models showing the inter-agency relationship can be identified. The first one, stressing the inter-agency power struggle, can be called 'power expansion' model.[36] This model stresses that the PCs had wishes to expand its power by using the bottom-up support generated from the voters. Scholars taking this view emphasise the importance of the voter support enabling the PCs to challenge those political institutions

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[33] Zhe Sun, "Party and Parliament in a Reforming Socialist State. The Remaking of the National People's Congress in China: 1979--1999" (Ph.D. Thesis, Columbia University, 2000). P.21.
[34] Tanner, *The Politics of Lawmaking in Post-Mao China* p. 107.
[35] Ibid. Part III.
[36] The name of this model is enlightened by He's research, see Junzhi He, *Institution Waiting for Interest: Research on the Mode of Development of Chinese County Level Congress (Zhidu Dengdai Liyi: Zhongguo Xianji Renda Zhidumoshi Yanjiu),* (Chongqing: Chongqing People's Press, 2005). p. 32.

(Primarily the CPC and the Government) with a higher authority and greater power.[37] Challenges to that model come from two sides; on the one hand, it to some extent conflicts with empirical evidence. For example, cases of overt inter-institutional power struggle were rare. Similarly, whether the voters' support could be a strong motivation was questionable. On the other hand, even if its presumption that direct elections may generate greater bottom-up support from the voters is tenable, this model is available only to the analysis of the bottom two tiers of the PCs because the upper three levels of the PCs are indirectly elected.

In contrast to the power expansion model, the second model stresses inter-agency cooperation. It consists of at least three specific models. The first one, from O'Brien, highlights the role of the 'embeddedness' process in the inter-agency structural changes. According to the author, 'embeddedness' refers to the build up of the connection between the PCs committees and other political institutions. The PCs as an institutional 'later-comer' attempted to embed its new institutions into the already established institutions. An example being the process whereby the newly established law committee embedded in the existing law-making institutions such as the governmental legal office (Fazhiban).[38] To be different from the power expansion model, O'Brien claims that the local PCs have a strong desire to be led by the Congress of the upper tier despite NPCSC chairman Peng's many claims that the relationship between PCs of different tiers should not be that of 'leadership' but 'working guidance'.[39]

Xia's network model emphasises inter-agency connections as well; however, his model stresses that such connections were created by the PCs whose 'information function' were desired and welcomed by central level decision makers. In Xia's language, such activity is called an 'information broker'. Two reasons are provided by the author to explain why such a role was established and facilitated the PCs' institutional development: first, the inherent lack of information passage of both the top-down and

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[37] Shikai Hu, "Representation without Democratization: The "Signature Incident" and China's National People's Congress " *Journal of Contemporary China,* 2, no. 2 (1993): 3 - 34; Oscar Almen, "Local Elections in China " *Politologiske Studier,* 2 (2003): 45-56; Murray S. Tanner, "Organizations and politics in China's Post-Mao law-making system", in Pitman B. Potter, "Domestic Law Reforms in Post-Mao China ".

[38] Kevin J. O'Brien, "Chinese People's Congress and Legislative Embeddedness " *Comparative Political Studies,* 27, no. 1 (1994): 80-107.

[39] Kevin J. O'Brien and Laura M. Luehrmann, "Institutionalizing Chinese Legislatures: Trade-Offs between Autonomy and Capacity " *Legislative Studies Quarterly,* 23, no. 1 (1998): 91-108. In this work, O'Brien further expands his "embeddedment" model and concludes that the basic principle of the development of the local level PCs is that the raise of legislative capacity must be at the cost of sacrificing the autonomy, and *vice versa.*

bottom-up direction in the bureaucratic Communist state needs information for decision-making that is provided by the institutions who may effectively transmit information. Second, the LPC lacks sufficient support from both the power holders on the top and the voters on the bottom; therefore it is neither under the direct leadership of the national level Congress nor is it created by direct elections. Consequently, the LPC has to expand its structure in the network of the institutions without challenging the power of the existing political institutions. [40]

The third specific model brought forward by Cho echoes the above two models. In his study of the LPC, Cho develops an 'adherent development' model. The empirical evidence in his study shows that the functional increase of the LPC derived not from struggling with the CPC committee, but from adherence to the CPC. In assisting and supporting the CPC to fulfil certain demands, certain functions and powers, particularly the supervisory power, flowed into the conference hall of the LPC. Regarding the relationship among the three major agencies – the party, the PCs, and the Government, Cho believes that the PCs' priority was to cooperate with the party. In order to earn more support from the party, the PCs tried to actively examine the works of other institutions, such as the People's Court, that were lower in the power sequence, by which the PCs made the party realise that it could be an ideal 'instrument' in overseeing other agencies.[41] Another uniqueness of Cho's model is that it divides the development session of the PCs into two phrases: the first phrase lasted from the establishment of the LPC (most of them started in the early 1980s) to the early 1990s, in which inter-agency cooperation was its main character; the second phrase began in the early 1990s and witnessed the growing number of confrontations between the PCs and other power holders, though the cooperation has always been the basic strategy.[42]

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[40] 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,* 9, no. 24 (2000): 185 - 214；Ming Xia, "Informational Efficiency, Organisational Development and the Institutional Linkages of the Provincial People's Congresses in China " *The Journal of Legislative Studies,* 3, no. 3 (1997): 10 - 38; Ming Xia, *The People's Congresses and Governance in China : Toward a Network Mode of Governance,* (London ; New York: Routledge, 2008).Chap. 1.

[41] Young Nam Cho, "Symbiotic Neighbout or Extra-Court Judge? The Supervision over Courts by Chinese Local People's Congresses " *The China Quarterly*, no. 176 (2003): 1068-83.

[42] Young Nam Cho, "From "Rubber Stamps" To "Iron Stamps": The Emergence of Chinese Local People's Congresses as Supervisory Powerhouses " *The China Quarterly*, no. 171 (2002): 724-40; Young Nam Cho, *Local People's Congresses in China: Development and Transition,* (Cambridge; New York: Cambridge University Press, 2009). p.11. That confrontation continued in the 1990s; see Melanie Manion, "When Communist Party Candidates Can Lose, Who Wins? Assessing the Role of Local People's Congresses in the Selection of Leaders in China " *The China Quarterly,* 195 (2008): 607-30.

The abovementioned three specific models provided by O'Brien, Xia, and Cho, although focusing on different tiers of the PCs, have two important common themes: firstly, they all see the PCs as a late comer who, to use Cho's language, went into an already crowded power arena[43] and had neither willingness nor capacity to compete with other well established institutions. Secondly, although the power struggle was not the main development strategy, all of the abovementioned scholars confirm that the power of the PCs was increasing during the 1980s, which was the result of the successful use of cooperative development strategy (or in another word, the non-marginal development strategy) which minimised the opportunity to rise other political institutions' concern with their power being 'stolen' by the legislature.

The third model starts from a distinct basis. He (name of the scholar), based on his research of the institutional development of the LPC (particularly the fourth municipal level), claims that the LPC was too weak to compete with other institutions; therefore, its primary task was neither power expansion nor cooperation, but its own survival, which meant to consolidate its institutional legitimacy. In fulfilling so, several strategies were applied to implant party and governmental officers a consciousness of the PCs' highest authority. The strategies also include begging to be controlled by the party committee of the same tier, and obtaining support from the government, the court and the procuratorate.[44]

3. Behavioural

Behavioural developments of the PCs during the 1980s were also remarkable. O'Brien emphasises its three aspects: transparency of deputy activities and conference increased, emergence of debates, and the committees with greater active. According to his research, a limited openness has been achieved; specifically, the works of the congress were more "traceable". For example, stenographers and records were introduced into the conference to record the process.[45] O'Brien also notices that, compared with the meetings that were held secretly before the reform era, the attending allowance given to

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[43] The NPC and Provincial People's Congress (PPC) were formed in 1954; the central government was established in 1949; the Communist Party was established in 1921; the Standing Committee of the LPC (Last Three tires) was formed even later at 1980. Considering that the NPC and the PPC was dissolved during the culture revolution, it can be said that every tier of the PCs can be seen as a late comer (all the PCs institutions were established after the establishment of the CPC).

[44] He, *Institution Waiting for Interest*; pp. 176-98.

[45] O'Brien, *Reform without Liberalization*.; p. 118.

journalists from China, Hong Kong, Taiwan, and Western countries can be seen as a substantial development.[46]

The development of the behaviour of individual PCs deputies is another academic focus. A lack of debate was said to be responsible for the PCs' 'rubberstamp' character. However, things partially changed for at least two reasons: first, there were debates among NPC deputies from different regions of the country, which were never seen before 1978. One salient example is that deputies from inland China criticised the imbalanced policy that granted eastern coastal cities with preferential support. Second, there was 'intense debate-compromise' among the members of the NPCSC in the law-making process,[47] which to some extent made it a process on the rational basis. In addition, Tanner stresses the appearance of negative vote, which was claimed by the author to be the most preeminent evidence of the PCs' behavioural developments.[48]

II. Limitations of the 1980s PCs

A methodological 'pitfall' must be revealed in the beginning of this section, because the majority of literatures showing the limitations of the PCs developments are its victim. In depicting the development, the control group can be easily settled to the institutions before the reform period; however, in depicting the limitations, there must be a control group outside the system itself. As the legislative study is always based on a highly Westernised context, both Western and Chinese scholarship cannot avoid taking a Westernised paradigm as they inevitably set the legislatures in major Western countries (e.g. America and major European Countries) as their control group. This preset can be observed frequently from the studies of the limitations of Chinese politics – saying the PCs have a limitation automatically means it has certain institutional designs that are different from a typical Western legislature. For example, comparing the average size of the Western legislatures, the NPC must be too large. However, equating diversity to limitations may result in many misunderstandings since such a comparison overlooks China's social, economic, conventional, and historical uniqueness. As this part reveals, some scholars non-deliberately take a default view equating diversity as limitations; while some others successfully avoid that methodological pitfall by only examining

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[46] Ibid. p. 118.
[47] Ibid. pp. 134-145.
[48] Tanner, *The Politics of Lawmaking in Post-Mao China*, p. 1.

whether institutional developments facilitated the fulfilment of a series of ubiquitous political values such as democracy and participation.

1. Functional

Following his framework of the four functions, O'Brien believes that the major limitation of the 1980s NPC was not that it lacked law-making power but that such power was ambiguous and divided.[49] His study also points out that the power of the provincial People's Congress to make provincial level regulations was responsible for the ambiguity. Moreover, there were at least three central level law makers in China: the party, the State Council, and the NPC. The 'division of labour' among those three institutions in the law-making procedure was largely based on Constitutional conventions but not the established laws or regulations, which thereby further intensified the conflicts between each other.[50] Seidman and Seidman identify three limitations of the NPC's law-making function: first, compared with the huge demand for new laws, the NPC's law-making capacity was low; secondly, new laws had many flaws and many articles lacked feasibility; thirdly, new laws might result in negative effect, as they were not carefully designed and debated before promulgation.[51]

The supervisory function, according to O'Brien, developed since the 1980s. However, the core roles of legislative supervision, namely protecting the basic human right and preventing political power from being abused, were not fulfilled.[52] O'Brien also notes the deputies' lack of wish to engage in supervisory activities because of 'open briberies' that include exquisite banquets, gifts, and tourism. They were, according to related regulations, largely free from sanctions.[53] Cho points out that the supervisory power that the PCs obtained was largely derived from the CPC's bestowing, as the latter believed that 1) the PCs carried out that function effectively; 2) it echoed the CPC's 'guideline' of the political reforms in the 1980s making the CPC to retreat from specific daily administrative affairs; 3) the strengthening of this function would not threaten the

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[49] O'Brien, *Reform without Liberalization*, p. 159-60.
[50] Ibid, p. 159-60.
[51] Ann Seidman and Robert Seidman, "Drafting Legislation for Development: Lessons from a Chinese Project", pp. 9-10.
[52] O'Brien, *Reform without Liberalization*. p. 164.
[53] Ibid. p. 166.

CPC's authority.[54] In other words, Cho shows that the increased supervisory power was never based on any structural change.

For the limitations of the representative function, although deputies had a greater concern with their function of serving the voters, their most commonly seen role was an agent of the party and the top-down policy conveyer of the central Government. O'Brien shows that deputies focused on representing large regions (such as the 'Western part of China' or even the whole country) or the interest of their profession. The fact that they may give assent to those decisions that contradict the interest of their own constituency shows that the deputy-constituency linkage was to a greater extent not established during this period.[55] O'Brien further mentions that, under his 'agent-remonstrator bifurcation',[56] deputies fulfilling the role of agents were appreciated; whereas deputies who failed to act as a remonstrator were not blamed. This contrast shows a distorted rewards and penalty criterion that further limited the development of representative function.[57]

2. Structural

As abovementioned, the PCs internal structural development reached an unprecedented level in the 1980s. However, several flaws remained: primarily, in Tanner's study, the size of the NPC Plenary Session did not reduce to a rational level; cumbersome Plenary Session meetings discouraged certain functional expansions, although several changes, such as grouped small scale meetings, were applied. Secondly, the NPC Working Committees that were established for the law-making and other functions were short of resources.[58] Research confirms that a lack of resources also happened in the LPC committees.[59] Thirdly, government officers accounted for a large proportion of the NPCSC deputies in the 1980s, which resulted in a barrier that prevented new legislation to confine arbitrary political power. In Tanner's salient example, the draft of the Organic Law of the Villagers Committee of the People's Republic of China faced a

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[54] Cho, *Local People's Congresses in China : Development and Transition*. Chap. 3.

[55] O'Brien, *Reform without Liberalization*.p. 170-171.

[56] Kevin J. O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies " *The China Quarterly*, no. 138 (1994): 359-80.

[57] I. Bid.

[58] Lack of human resource was the major problem in the early 1980s; the rising bureaucratism and organisational overlapping also drained the gains from the increase to human resource (increased staff members helped very little in increasing efficiency because of the bureaucratic system). Tanner, *The Politics of Lawmaking in Post-Mao China* ; p. 110.

[59] He, *Institution Waiting for Interest.* p. 170-175.

huge handicap in the NPCSC bill reading process for the government officer deputies' worrisome about its effect on cutting down the power of grassroots level government and party.[60] Other flaws mentioned by the author included the too short and unfixed session of Plenary Session meetings, and deputies having insufficient time for scrutiny (draft bills sent to the deputies only a few days before the vote, part-time deputies also cannot afford sufficient time to perform their functions).

Regarding the limitations of inter-agency structural development, Dowdle confirms that the PCs were particularly passive in playing a role in governmental personnel decisions, which was caused by its structural overlapping with the party.[61] O'Brien shows that the PCs-party relationship that gave the CPC a dominant status was the handicap to the PCs structural developments: as a result of the Party dominance, very few of the reforms in the 1980s were aimed to change the CPC's dominance and to increase democracy.[62] In Womack's language, all of the PCs structural developments which were confirmed by the Electoral Law were derived from "*the support of central leadership rather than popular pressure*".[63]

3. Behavioural

O'Brien describes the NPC behavioural limitations from four aspects: 1) deputies lacked time and opportunity to express their opinion; 2) they also lacked proper procedures to overtake their functions; 3) Specific institutional designs securing the deputies' right to make speech freely did not exist (although legal provisions secure this right);[64] 4) the elections of the top three tier PCs were non-directive and not competitive, therefore the voter-deputy linkage was not created and the deputies had no sense of holding accountability to their voters.[65] It can be seen that O'Brien largely attributes the four behavioural limitations to structural reasons.

Behavioural limitations are mentioned by other researchers as well; Jacobs mentions the flaws of deputy elections that in order to increase representativeness, the electoral

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[60] Murray Scot Tanner, "The Erosion of Communist Party Control over Lawmaking in China " *The China Quarterly*, no. 138 (1994): 381-403.

[61] Dowdle, "The Constitutional Development and Operations of the National People's Congress".

[62] O'Brien, *Reform without Liberalization*.; p. 92.

[63] Womack, "The 1980 County-Level Elections in China: Experiment in Democratic Modernization". p. 262

[64] O'Brien, *Reform without Liberalization*. pp. 141-44.

[65] O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies".

committee *"can specifically draw an electorate to include a particular interest"*,[66] which can be seen as a deliberately allocating of seats. Seidman explains the functional limitation from a behavioural perspective. According to him, the crippled law-making function was largely caused by three of the deputies' behaviours: imitation of corresponding foreign law, practising the Marxist model of law and society, particularly the Marxist tenet claiming that the mode of production determine the law, and taking a typically positivist legal view seeing law as merely a tool determining rights and duties.[67]

III. Exploration of institutional change

As the above two sections illustrate, most, if not all, of the literature reviewed takes a structural perspective which sets structure at the origin of institutional development. This is the reason as to why the research shown in the above two sections seem to be 'descriptive': for the literature taking a structural approach, *describing* the structural characteristics is simultaneously *explaining* the functional and behavioural characteristics they described. However in this section, the reviewing of related researches broadens out the perspective of classic institutional research that primarily focuses on structure, function, and behaviour; instead, it takes a much broader perspective by reviewing research that takes alternative approaches.

1. Political sociological approach

The political sociology approach emerged in the latter half of the twentieth century. In borrowing certain sociological terms and methodologies, it places and studies politics within an understanding of the society in which political activities are taking place. This approach has no clear boundary, though generally speaking, three specific approaches are worth highlighting.

(1) Political Participation

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[66] J. Bruce Jacobs, "Elections in China " *The Australian Journal of Chinese Affairs*, no. 25 (1991): 171-99

[67] Seidman and Seidman, "Drafting Legislation for Development: Lessons from a Chinese Project " p. 11

As one of the legislature's crucial functions is to offer a path for mass political participation, the political participation perspective has been frequently adopted to understand the PCs changes. Scholars taking this perspective believe that the PCs development was the consequence of the party's attempts at very limited institutional changes that then gradually developed into society-wide reform because of the rapidly increasing demand for mass political participation. In examining the legal development, Potter confirms the hypothesis that the limited reform, once being launched, tended to be deepened by mass participation that went beyond the CPC's own willingness and control. Salient evidence showing that the party was not well prepared for mass participation; an example was the party's limited desire to enhance the legal system being used by the majority as a weapon to fight against corruption, guard their basic rights, and demand more political rights.[68] Potter equates this situation to "riding the tiger", which means once ridden, it will be danger to dismount. In the same vein, Alford likens the same situation to a "two-edged sword".[69]

The greatest challenge to applying this analysis is whether the party *de facto* lost its control of the reforms and the increasing political participation *de facto* developed the limited reform into, to some extent, radical society-wide changes. Taking an opposing view, Womack believes that the plan of the CPC was to launch a limited reform, and this reform was always under the control of the CPC.[70] The rise of the PCs was the outcome of the party's wish to increase popular sovereignty that contributed to the party's focus on fighting against the 'feudal patriarchal system'.[71] Similarly, Burns claims that the PCs reforms should not be understood as an increase in political participation, but rather as changes in the pattern of the CPC's political control.[72]

This approach is also taken to explain the limitations of the reform by highlighting that an insufficient and inadequate participation resulted in a lack of bottom-up support. This coincides with the previously reviewed research showing that the PCs representational function was extremely weak from the bottom-up direction. Shi and Nathan's research of the grassroots political participation during the 1980s is perhaps the most typical and influential one. Shi's contributions confirm that the LPC deputy election related

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[68] Pitman B. Potter, "Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China " *The China Quarterly*, no. 138 (1994): 325-58

[69] William P. Alford, "Double-Edged Swords Cut Both Ways " *Daedalus,* 122, no. 2 (1993): 45-69

[70] Brantly Womack, "Modernization and Democratic Reform in China " *The Journal of Asian Studies,* 43, no. 3 (1984): 417-39

[71] Ibid.

[72] Burns, "The People's Republic of China at 50: National Political Reform "

activities, such as electoral campaigning, were one of the most crucial strategies of political participation during the 1980s.[73] According to his survey, LPC elections were competitive; the candidate nominating process was to some extent open to mass participation. Shi confirms that at least before 1987, competitive elections were widely observable for many constituencies, particularly those of the universities.[74] His survey also shows that more than half of the elected deputies of Beijing University were dissidents, and the voting campaigns, before the amendment of the Electoral Law, were conducted with a clear emulation of Western elections; moreover, strategies such as boycotting or even demonstrating were applied to resist manipulated elections.[75]

Shi's focus on direct mass-deputy petitioning (another way of participation) reveals three factors that reduced its effectiveness: first, echoing Bialer's widely recognised division of 'high politics' and 'low politics',[76] Shi believes the issues that the LPC deputies were able to transmit to the higher ranks belong to the category of low politics;[77] secondly, this strategy was effective in influencing the agenda setting and policy formulation, but was less effective in helping the local bureaucrats to decide and implement policies;[78] thirdly and most importantly, there has always been a huge gap between Western practices of political participation and those of China. Participation strategies in the Western 'control group' focus on influencing the policy making process, whereas in China they focus on influencing the policy implementation process, by which the distribution of public resources might be altered to benefit the participants. As an institution primarily focused on policy making rather than policy implementation, the People's Congress was less likely to be chosen by the commons as a means of participation.[79]

(2) Political Culture

As an important intervening variable in legislative development, political culture is another essential concern of political sociological research. Min's book, published just

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[73] Tianjian Shi, *Political Participation in Beijing,* (Cambridge, Mass: Harvard University Press, 1997). P. 96. See also the table at p. 94.

[74] In the township/district level People's Congress deputy elections, if a university is enough large, it may be identified as a constituency.

[75] Ibid. p. 36-37; Andrew J. Nathan, *Chinese Democracy,* (Berkeley: University of California Press, 1986). Chap. 10.

[76] Seweryn Bialer, *Stalin's Successors : Leadership, Stability, and Change in the Soviet Union,* (Cambridge Eng. ; New York: Cambridge University Press, 1980). p. 166.

[77] Andrew J. Nathan and Tianjian Shi, "Cultural Requisites for Democracy in China: Findings from a Survey " *Daedalus,* 122, no. 2 (1993): 95-123.

[78] Shi, *Political Participation in Beijing.* pp. 59-60.

[79] Ibid. p. 274

before the Tiananmen incident, has been so far the only literature applying the Western political culture research paradigm (Almond and Verba's framework) and the statistic method to the study of Chinese political culture of the 1980s and their institutional effects. Having a strong linkage to the ensuing study of this research, his three findings are worth highlighting: institutional identity, understanding of democracy, and the 'rule of law' concept.

In regard to institutional identity, only 15.39% and 38.67% of the people showed full confidence in the PCs and its institutional design respectively; 22.59% and 13.55% showed no confidence; the remainning 45.52% and 38.72% of those surveyed expressed partial confidence.[80] Meanwhile, the majority (68.93%) indicated their confidence with the government. The survey also demonstrated a sharp increase in individuals who were apathetic to the party compared with the 1950s and 1960s.[81]

The book confirms that the Chinese people had a positive attitude toward democracy (75.06%). However, the survey also clearly showed that Chinese people had difficulty in fully understanding the meaning of democracy, resulting in misunderstandings of what it entails. Specifically, the author identifies two major misunderstandings that may explain the reasons for the PCs development limitations. Firstly, respondents equated democracy to populism[82] and benevolent despotism, both having a long history and deep roots in Chinese society. Secondly, those surveyed equated democracy with direct political participation, thereby belittling representative democracy.

The survey of Chinese people's 'rule of law' concept may also explain the PCs development limitations: (1) with only 3% of the respondents confirming that the fulfilment of democracy needs a system of checks and balances; while (2) 42.9% of the respondents believed that the rule of law has no relevance to politics;[83] (3) ordinary people had remarkably little knowledge about the new Constitution promulgated in 1982; (4) ordinary people had no knowledge about the PCs' crucial role in political

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[80] Qi Min, *Zhongguo Zhengzhiwenhua: Minzhu Zhengzhi Nanchan De Shehui Xinli Yinsu (Chinese Political Culture: the sociopsychological coercing the creation of democratic politics,* (Kunming: Yunnan People's Press, 1989). p. 43.

[81] Ibid. p. 56.

[82] Populism (Min ben zhu yi) refers to a series of claims stressing that ruling power holders should consider the interests of the masses and hear the voice of the masses. Its fundamental difference to modern democracy, particularly the democracy based on the social contrast consciousness, is that the populism stresses that the power holders by nature have political power when ruling the masses. Moreover, the populist claims do not offer any legal, but moral, constraints to power holders' abuse of political power .

[83] This work has a potential methodological flaw; the author did not explain to the respondents what they meant by the 'rule of law'.

reform – with strengthening of the law-making function of the People's Congress being in penultimate position when people were asked to weight sixteen possible approaches to institutional reform.[84]

(3) Civil society and 'public sphere'

The public sphere discourse, sharing certain common themes with the long established civil society theory, was not applied to the study of Chinese politics until the end of the 1980s.[85] This innovative approach, along with the civil society theory, became popular since the 1990s for its strong explanatory capacity.

Based on the pioneering research of the Soviet Union and the East European Soviet Countries using this approach, scholars of Chinese politics have focused on the immaturity of both the civil society and the sense of public sphere in China and consider them as reasons for the limitations of democracy.[86] One interesting finding is that, compared to the East European Soviet Countries where Communist rule ended in the late 1980s, civil society in China was severely under developed. Its development in the 1980s China was even behind that in China's republican period (1911-1949).[87] In regard to the post-1949 period, Fewsmith confirms that the most typical characteristic of Chinese society, under the rule of the CPC, was the politicisation of the society;[88] Nathan points out that party control, under which every organisation and all people are placed in a 'net', has been the critical handicap in the development of civil society.[89]

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[84] Min, *Chinese Political Culture*. pp. 164-65, 184.

[85] See *Jürgen Habermas, The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, (Cambridge, Mass.: MIT Press, 1989). See also Richard Madsen, "The Public Sphere, Civil Society and Moral Community: A Research Agenda for Contemporary China Studies" *Modern China,* 19, no. 2 (1993): 183-98. Frederic Wakeman, Jr., "The Civil Society and Public Sphere Debate: Western Reflections on Chinese Political Culture " *Modern China,* 19, no. 2 (1993): 108-38; p. 109.

[86] See, for example, Cheek, "From priests to professionals: intellectuals and the state under the CCP," in Jeffrey N. Wasserstrom and Elizabeth J. Perry, *Popular Protest and Political Culture in Modern China,* (Boulder: Westview Press, 1994).

[87] William T. Rowe, *Hankow: Commerce and Society in a Chinese City, 1796-1889,* (Stanford, Calif.: Stanford University Press, 1984). Kusin's book shows the significant role of the civil society in the East European countries that has been well established before the communist occupation. This civil society played a vital role in ending the Communist ruling and restoring European tradition. It can be said that such basis in China was too weak to support the development of a civil society from the Party-controlled society. See Vladimir V. Kusin, *The Intellectual Origins of the Prague Spring; the Development of Reformist Ideas in Czechoslovakia, 1956-1967,* (Cambridge [Eng.: University Press, 1971). passim.

[88] Fewsmith, "The Dengist reforms in historical perspective", in Brantly Womack, *Contemporary Chinese Politics in Historical Perspective,* (Cambridge [England]; New York: Cambridge University Press, 1991). p. 25.

[89] Andrew J. Nathan, *China's Crisis : Dilemmas of Reform and Prospects for Democracy,* (New York: Columbia University Press, 1990). p. 122.

Moreover, both the CPC, and the Nationalist Party of China (KMT) which ruled China before the CPC, adopted a neo-traditionalism that blurred the boundary of public and private. [90] In addition, nationalism as perhaps the most prevailing thought in twentieth century Chinese society is identified by Fewsmith to be the critical hindrance to the development of civil society;[91] his study is echoed by McCormick's comparison of the establishment of the civil society in China and East European Soviet Countries.[92]

Some positive signs of the rise of a civil society and the sense of public sphere during the 1980s are also revealed.[93] In Liu's language, the relationship of political structure and social development is just like the relationship between the egg shell and the chicken: sooner or later it will break the shell that confines its development.[94] The social political reform in the 1980s, according to Fewsmith, was turning society, particularly the private life, apolitical, thereby facilitating the rise of social organisations and the public sphere; while, the activity of an intellectual elite in shaping public policy was unprecedented, which, according to Habermas, is an important sign of the rise of the public sphere.[95]

2. Legitimacy approach

Legitimacy approach is another widely recognised way of explaining the changes of political institutions, including the NPC. Following the classical legitimacy theory of Weber, most related explanations can be contextualised as setting ideological disillusion (to be specified in the ideological approach) as the logical starting point: with the origins of the institutional reform being more or less linked to the party's needs to rebuild the regime legitimacy which was, before the end of the CR, provided by Marxist ideology and Mao's charismatic legitimacy. This source of legitimacy was severely damaged by the CR and resulting in an ideological disillusion. However, the Chinese situation varied to some extent from Weber's classic doctrine: economic growth became a major legitimacy provider, which clearly differed from the Weberian legitimacy theory which claims that fallen charismatic or ideological legitimacy would normally be replaced by the legitimacy generated from the designing of political institutions in a

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[90] Fewsmith, "The Dengist reforms in historical perspective", p. 28.
[91] Ibid. p. 32.
[92] Barrett L. McCormick et al., "The 1989 Democracy Movement: A Review of the Prospects for Civil Society in China " *Pacific Affairs,* 65, no. 2 (1992): 182-202.
[93] Lowell Dittmer, *China under Reform,* (Boulder: Westview Press, 1994). pp. 153-54.
[94] Cites in Nathan, *China's Crisis : Dilemmas of Reform and Prospects for Democracy*.; p. 120.
[95] Fewsmith, "The Dengist reforms in historical perspective" p. 26.

rational basis.[96] This divergence is partially explained by Lowenthal.[97] According to him, an undeveloped Communist country always faces two conflicting goals – politically forced development and ideology maintenance, from which the authority has to choose one. In China, as the disillusioned ideology could not be rebuilt in a short time, economic development was the only possible choice.

Lowenthal's research has an underlying logic: institutional development cannot by itself legitimise the Communist regime; ideological legitimacy and performance (economic growth) legitimacy are alternative choices. More importantly, as many pieces of academic research show, in the 1980s the CPC, at least partially, acknowledged the idea that economic growth is not possible without an institutionalised political and economic system. For example, Tanner points out that one aim of the PCs reforms were to create a smooth environment for economic development;[98] Potter also confirms that the PCs strengthening of the legislative function was aimed at economic development,[99] which coincides with the three dynamics of the PCs reform identified by O'Brien: economic development, government efficiency, and political stability. [100] This idea is also confirmed by domestic researchers in China. [101] In simple terms therefore, institutionalisation that should be the outcome of the Weberian classic legitimacy transition became a kind of instrumental 'catalyst' of the new source of legitimacy (see figure 3).

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[96] Max Weber et al., *Economy and Society: An Outline of Interpretive Sociology,* (Berkeley: University of California Press, 1978). For Deng's stress on the importance of economic development to restoring legitimacy, see Bruce Gilley, *China's Democratic Future: How It Will Happen and Where It Will Lead,* (New York: Columbia University Press, 2004). P.45; Ezra F. Vogel, *One Step Ahead in China : Guangdong under Reform,* (Cambridge, Mass.: Harvard University Press, 1989). Chap. 1.

[97] R Lowenthal, "Development vs. Utopia in Communist Policy", in Chalmers A. Johnson ed., *Change in Communist Systems,* (Stanford: Stanford University Press, 1970). p. 50.

[98] Tanner, *The Politics of Lawmaking in Post-Mao China*, p. 52.

[99] Potter, "Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China".

[100] Kevin J. O'Brien, "China's National People's Congress: Reform and Its Limits " *Legislative Studies Quarterly,* 13, no. 3 (1988): 343-74.

[101] See, Cai, *Lishi Yu Biange*. ; Youyu Zhang, "Build up the democratic politics with Chinese character", in Youyu Zhang (ed), *Zhang Youyu Xueshu Lunzhu Zixuanji (Selected research writings of Zhang Youyu),* (Beijing: Beijing Normal University Press, 1992). p. 455.

Figure 3: *Classic Weberian legitimacy transition and the legitimacy transition in China*
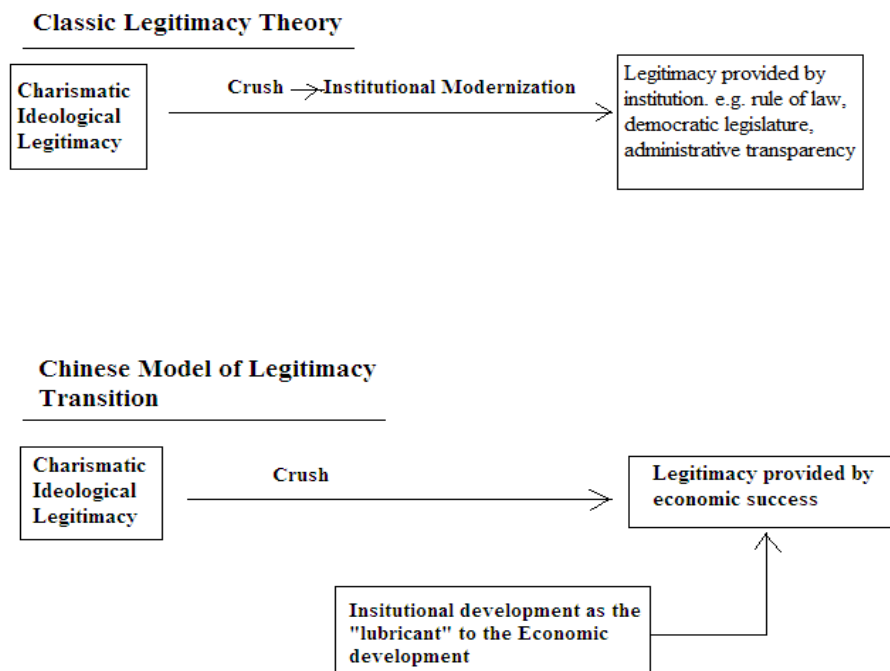
Figure by author

3. Ideological approach

The abovementioned 'ideological disillusion' and the rise of new consciousness are the primary focus of the studies taking this approach. Basically, the 1980s witnessed a systematic disillusion with Marxist-Leninism ideology, which was observed from individuals both inside and outside political power structures.[102]

The decline of Marxist ideology coincided with a remarkable ideological transition, which, as many scholars show, influenced the development of the legislative system. Comparing the anti-rightist movement and society-wide movements in the 1980s aiming to guard the official ideology, Cai confirmed that the 'ideological climate' in the latter period was less tight than that before 1978,[103] which is echoed by Dowdle and explained by Goldman.[104] Wormack shows that the masses' absolute obedience to

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[102] Richard Baum, "China in 1985: The Greening of the Revolution " *Asian Survey,* 26, no. 1 (1986): 30-53;Richard Baum, *Burying Mao : Chinese Politics in the Age of Deng Xiaoping,* (Princeton: Princeton University Press, 1994). Merle Goldman, "The Twentieth Anniversary of the Democracy Wall Movement " *Harvard Asia Quarterly,* Jan. 2006 (2001)

[103] Cai, *History and Change*. chapter 4.

[104] Dowdle, "The Constitutional Development and Operations of the National People's Congress". Merle Goldman, "Human Rights in the People's Republic of China " *Daedalus,* 112, no. 4 (1983): 111-38.

political power was replaced by an acknowledgement of social and economic complexity, which then resulted in many changes, including more openness to Western countries and the decentralisation of stratified politics.[105] Moreover, there was a wide consensus between the power holders and the masses regarding the necessity for legalised economy. [106]

Not only was a certain degree of innovative thought accepted as an official doctrine that provided the PCs with an unprecedented intellectual space for development; People's Congress deputies also had new understandings of their role. Liu makes an interesting comparison between the deputy's understanding of their representational roles in the period of Mao and Deng; his study shows that deputies in the former period thought their deputyship were bestowed by the party, and they should be obedient to the party to repay its 'benevolence'. However, this concept changed, with the new concept developing in the 1980s as deputies started seeing themselves as the representatives of the people.[107] O'Brien's article, based on his empirical survey carried out during 1987 – 1991, also confirms this change by stressing that during the 1980s deputies were not only the "agents" of the party but were, though rarely, the voter's "remonstrator".[108]

The ideological approach is also widely applied in explaining the limitations of the PCs reform. Pioneering research had a particular interest in the three types of ideologies, based on which were four types of conflicts that were thought to be responsible for the limitations of the PCs reform.

The three ideologies of the 1980s were the nominal official ideology in a form of systematic doctrine, the official ideology that functioned in practice, and the non-official ideology.[109] The nominal official ideology was largely built on the basis of the Marxist-Leninist doctrine; however, it also combined many Chinese characteristics, which gave it the name 'Socialism with Chinese Characteristics.'[110] Its formalist nature came from the fact that its appearance is observed largely from official propaganda and

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[105] Womack, "Modernization and Democratic Reform in China".

[106] Seidman and Seidman, "Drafting Legislation for Development: Lessons from a Chinese Project "

[107] Haitao Liu, "Conference Paper: Renda Daibiao De Juese Chongtu (Role Confliction of People's Congress Deputy)," in *Daibiao Zhidu Yu Daibiao Lvzhi Kongjian (Deputy System and Space for Deputy Activity)* (Fudan University: 2010).

[108] O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies".

[109] The identifying of the three types are based on pioneering research, see, for example, Perry Link et.al, 'Introduction', ed. Perry Link et. al, Unofficial China: Popular Culture and Thought in the People's Republic (Boulder: Westview Press, 1989).

[110] This point will be further developed in the later part discussing the Orthodox CPC doctrine.

the instilling of an official ideology (by a mandatory ideological education system), but not from the authority's in-practice political life principles. Such inconsistencies of the CPC's policies illustrate the existence of a second, practical level, official ideology normally known to have a strong pragmatic and instrumentalist nature. The non-official ideologies in the 1980s, including segments of traditional Chinese thought and foreign ideas, were the third and even more complicated source of ideology (a specific discussion is in chapter six).

Within the context of the three types of ideologies, scholars identify four major ideological conflicts that may explain the limitations of the reforms. The most widely recognised and studied was the conflict between the official ideology as a formalist doctrine and that in daily practice. In his study of the law-making process in China, Lubman shows that the law-as-an-instrument consciousness was a significant hindrance to the development of law-making function related activities.[111] Womack focuses on the conflict between the new pragmatism in the 1980s and the formal Marxist claims of 'modernisation as a public project and political reform as a strategic self-restraint of leadership.'[112] Xin uses a vivid metaphor to highlight this ideological dilemma: flashing the left turning signal while turning right ("Dazuodeng Xiangyouzhuan"), which means simultaneously holding the doctrine of leftist Marxism-Leninism while advocating an opening up and market oriented policy.[113]

The second conflict was the official ideology in practice and the attempts at reforming the political system. While acknowledging that its pragmatic and instrumentalist nature were not necessarily a negative factor for reforms, scholars claim it did not make a contribution to the reform, particularly the development of the institutions of the political power, including the PCs.[114] They believe that taking institutional development as merely an instrument made many potential changes not possible because any further goals, including fulfilling liberal democracy, were not in the reform calendar. Pragmatism further worsened this situation by rendering institutional development

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[111] Stanley Lubman, "Studying Contemporary Chinese Law: Limits, Possibilities and Strategy" *The American Journal of Comparative Law,* 39, no. 2 (1991): 293-341; p. 323.

[112] Womack, "Modernization and Democratic Reform in China"; p. 421.

[113] Rui Li, "introduction", from Ziling Xin, *Hong Tai Yang De Yun Luo: Qian Qiu Gong Zui Mao Zedong (The fall of the red sun: the successes and failures of Mao zedong),* (Hong Kong: Shu zuo fang, 2007).

[114] Xingzhong Yu, "Legal Pragmatism in the People's Republic of China " *Journal of Chinese Law,* 3 (1989): 29-52.

always in flux in order to reflect practical demands, which obviously harmed institutional development.[115]

Thirdly, scholars determined that the bifurcated and changing official ideology was in conflict with the demanding of the grassroots bureaucrats who needed a clear, palpable, and stable official ideology that could be applied to 'decipher and interpret' the always ambiguous policy lines provided by the central power holders, in which the real intention was always surrounded by a 'mist'.[116] That ambiguity resulted in both central and local power holders' hesitating to advocate any substantial institutional changes.[117]

The last conflict happened between non-official and official ideologies. Although non-official ideologies took many forms, scholars confirmed that severe conflict between the two ideologies was continuous in the 1980s and can be observed in almost every specific argument over the reform.[118]

4. Historical approach

The shockwave of the CR is perhaps the most popularly cited historical evidence in the research on the 1980s political reforms. Legal scholars such as Tanner, Potter, and Lubman, stress its destructive effect on the legal system that directly resulted in a quick recovery and development of the PCs' related functions.[119] Pye links the post 1980s reforms to the changes of the factional struggles during and after the CR.[120] Scholars also focus on the result of the CR shockwave in changing people's consciousness, which results in a hybrid perspective highlighting the role of history in the changes of

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[115] Lucian W. Pye, "On Chinese Pragmatism in the 1980s " *The China Quarterly*, no. 106 (1986): 207-34.

[116] Tang Tzou, "The Tiananmen tragedy: the state-society relationship, choices, and mechanisms in historical perspective", in Womack, *Contemporary Chinese Politics in Historical Perspective*, p. 285; It is named "*rhetorical aspect of Chinese politics*" in Solinger, "The Fifth National People's Congress and the Process of Policy Making: Reform, Readjustment, and the Opposition ". A specific example is available in Michael Sullivan, "The Ideology of the Chinese Communist Party since the Third Plenum" ed. Bill Brugger, Chinese Marxism in Flux, 1978-84, (Armonk, N.Y.: M.E. Sharpe, 1985).

[117] A specific example is available in Michael Sullivan, "The Ideology of the Chinese Communist Party since the Third Plenum" ed. Bill Brugger, *Chinese Marxism in Flux*, 1978-84, (Armonk, N.Y.: M.E. Sharpe, 1985).

[118] For example, see Potter, "Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China". Esp. chapter 6.

[119] See Tanner, *The Politics of Lawmaking in Post-Mao China*; Potter, "Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China"; Lubman, "Studying Contemporary Chinese Law: Limits, Possibilities and Strategy"; Pitman B. Potter, "Review: Legal Reform in China: Institutions, Culture, and Selective Adaptation" *Law & Social Inquiry,* 29, no. 2 (2004): 465-95.

[120] Lucian W. Pye, *The Dynamics of Chinese Politics,* (Cambridge, Mass.: Oelgeschlager, Gunn & Hain, 1981). P. 27.

ideology. For example, Oksenberg mentions that many power holders were illegally persecuted during the CR, which perhaps resulted in those people's strong demand for a robust legal system in the post-CR period.[121] Similarly, Xia calls the psychic shock as "Culture Revolution syndrome". According to his explanation, the tragedy resulted in a consensus among the elite that "democratic practices should be institutionalised and legalised". [122]

The historical approach links institutional limitations to certain historical origins, thereby providing an innovative way of deciphering the limitations of the reform. O'Brien focuses on the long lasting tradition of the regime to keep its power undivided and centralised, under which any structural reform with a checks and balances principle faced more of a hindrance than in a regime without that tradition. Similarly, bicameralism in 1980s was rejected for the same reason.[123] Instead of simply citing the 'Chinese tradition', some scholars have specifically focused on the historical impact of the late Qing dynasty and the ensuing republican period (from the end of Qing Dynasty in 1911 to the start of the CPC regime in 1949). Four significant 'actors' are particularly identified (an introduction to the political history before 1949 is in chapter five): the Qing dynasty, the Warlords in the early twentieth Century, the KMT, and the Pre-1949 CPC. For example, Womack shows that the organisation patterns of the pre-1949 CPC placed too much stress on the importance of centralisation, which could not positively influence or produce the post-1980s reforms aiming to increase participation and decentralisation. [124] According to Cohen, the 'letting go – tightening up circle' is explained by a historical perspective. His work shows that the similar 'circles' are widely observable both before and after 1949,[125] with the colonisation history (in some coastal porter cities) of the early twentieth century being also confirmed as a factor impacting on post-1949 CPC politics.[126]

Literature of this approach has a common theme that in stressing the historical effects that are identified as instigating the dynamic of the political development, a

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[121] Michel Oksenberg, "The Exit Pattern from Chinese Politics and Its Implications " *The China Quarterly*, no. 67 (1976): 501-18
[122] M Xia, "China's National People's Congress: Institutional Transformation in the Process of Regime Transition", in Nizam U. Ahmed and Philip Norton ed., *Parliaments in Asia,* (London ; Portland, Or.: Frank Cass, 1999). P. 110.
[123] O'Brien, *Reform without Liberalization*. p. 139.
[124] Womack, "Modernization and Democratic Reform in China " ; p. 11.
[125] Paul A. Cohen, "The Post-Mao Reforms in Historical Perspective " Ibid.47 (1988): 518-40.
[126] Paul A. Cohen, *Between Tradition and Modernity : Wang T'ao and Reform in Late Ch'ing China,* (Cambridge: Harvard University Press, 1974).

chronological 'gap' is created, which divided the political development into 'before 1949' and 'after 1949' session. Although the diversities of the periods before and after 1949, or in other words, before and after the establishment of the CPC regime, were preeminent, it is crucial to bear in mind that such a gap existed largely within the institutional perspective; the social and intellectual backgrounds, such as nationalism and a Confucian society, largely remained and continued to develop. It is also essential to stress that historical explanations are never applied as the sole explanation of the PCs development. As the impact of historical events cannot directly trigger institutional development, historical explanations must be combined with, or developed into, other factors, such as changes of consciousness. Therefore the impact of historical events is largely seen as an intervening or external variable.[127]

Conclusion: longing for a new explanatory perspective

Based on the review, a conclusion can be immediately drawn: the institutions of the Chinese legislature have been well studied; this is particularly so of the research of legislative reform from the late 1970s. Meanwhile, considering the new developments of the PCs and their limitations reviewed in the first and second sections, it can be clearly seen that development was imbalanced. In fact, this trend can be easily observed by simply looking at the expertise of the authors of the literature reviewed in those two sections – the majority of the authors are legal scholars. This is not surprising, for the review shows that during this period the NPC law-making functions and structures saw greater development than NPC's any other function. To take another example, the development of the representative function was observed only from a top-down direction, which echoes the widely noticed limitation of the NPC's lack of a bottom-up voter-deputy linkage.

The pioneering research, taking a widely observed structural perspective, is weak in providing a solid explanation to the imbalance of the development of the NPC institutions revealed in this chapter: there is evidence showing that the structural perspective may sometimes conflict with empirical facts. In other words, there were cases in which functional and behavioural developments were not the result of the

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[127] For example, 'Culture Revolution syndrome' was one of the three reasons cited for triggering the PCs development in abovementioned Xia's article , Tanner's three explanations, although two of them are regarding the Culture Revolution, do not directly label the history of Culture Revolution to be the direct explanation; See Tanner, *The Politics of Lawmaking in Post-Mao China* , p.52.

structural development.[128] Behind those cases is the uniqueness of the 1980s Chinese reform: *the reform was launched not because the structural weakness of the PCs needed to be strengthened; institutional changes in the Communist regime, to a large extent, should be seen as an instrument – with any changes being the result of certain instrumental aims; therefore a purely structural approach is methodologically flawed as it sees perfecting the structure as the aim of the institutional change.* More importantly, given that this approach can explain the origins and the limitations of the legislative institutional change, it is weak at explaining why the changes were imbalanced. For example, although scholars successfully describe such imbalances – according to O'Brien, defined as 'reform without liberalisation',[129] they are weak in explaining the reason for the resulting lack of liberalisation.

The approaches reviewed in the third part of this chapter can be divided into two categories; with the first category including approaches to political participation, political culture, civil society, and legitimacy. Reviewing of the related research confirms that the legislative institutions are surrounded by a huge external environment; their impact on institutional changes was strong and pervasive. In particular, this highlights the importance of studying the individual who participated or influenced reforms, as they directly link the external environment to the PCs institutional reform.

The second category includes the ideological and historical approaches. In discussing the historical approach, it is worth highlighting that in contrast to the 'path-dependence' concept brought forward by historical institutionalism stressing that the current institutional development is more or less imitating the 'path' of previous designs, researchers of Chinese politics taking a historical perspective emphasise that while the previous institutional design is effective in impacting the current *consciousness regarding the institutional design*, it does not directly impact the designs. The main reason for not directly influencing the designs comes from the great institutional gap of 1949: most of institutional designs in China after 1949 were largely copied from the Soviet Union, which resulted in entirely different styles and structures from those of the republican period (indeed the institutional designs of that period also dramatically differed from that in the Qing dynasty). The institutional designs in the post-1949

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[128] For example, see abovementioned Cho's study of the legislature's supervisory function related limitation.

[129] O'Brien, *Reform without Liberalization.* pp. 4-5. Tanner, "The National People's Congress", in Merle GoldMan and Roderick Macfarquhar, *The Paradox of China's Post-Mao Reforms,* (Cambridge: Harvard University Press, 1999). pp. 101-02.

period also changed drastically, which is particularly salient to the ten years abeyance suffered by the legislative system from 1966 to 1976. The researchers reviewed echoed this characteristic by primarily focusing on the previous institutional designs or the specific period (such as the CR), and many of their non-institutional impacts (such as shaping new consciousness) that indirectly impacted the 1980s institutional development. The ideological approach that is widely applied to the study of the Chinese institutional change further highlights the extreme importance of focusing on the changes in consciousness to explain the development of any specific institution.

The above discussed pros and cons of the pioneering studies suggest a new perspective. Such a perspective (1) should not be merely descriptive but explanative, as the specific legislative institutional changes have been well documented by the pioneering research. The forthcoming research will be valuable only if it explains how and why the characteristics of those changes were shaped. (2) Therefore, the new perspective should not only focus on the NPC's functional, structural, and behavioural developments, as they will largely result in a descriptive framework. (3) Based on the review of the literature in the third section that illustrates the value of social-political perspectives, a new perspective would contribute to the fulfilling of two of the above requirements if, under this perspective, the NPC institutional reforms are studied by setting the participants in the reform progress as the starting point – participants in the reforms are the most direct factor linking political institutions with the society as their external environment. Meanwhile, a considerable number of pioneering research focusing on the change of ideology and the collapse of ideological legitimacy suggest the importance of focusing on the consciousness of those influencers (see the discussion of 'intellectual background' in chapter three).

The necessity for creating a new theoretical framework having the above three characteristics can be easily understood by an example. The NPC is widely criticised by scholars for its law-making related institutional designs which give the executive too much power in drafting new laws, resulting in the weak law-making capacity of the NPC.[130] However, what the research largely overlooked, and is to be illustrated in the latter chapter, is that the majority of NPC deputies and staff members did not believe that the executive being given too much law-making power was an institutional flaw,

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[130] For example, Jianmin Zhao and Chunxiang Zhang, *The Legislative and Electoral System of P.R. China (Zhonghua Renmin Gongheguo li fa yu xuan ju zhi du),* (Taipei: Guo li bian yi guan, 2001). p. 128.

and such a belief had a strong linkage to their Marxist based intellectual ideas. This example shows the importance of discovering the background logic of the NPC development by studying the people, particularly their intellectual backgrounds, connecting to the NPC institutions; only in the so studying the flaw of superficially depicting the institutional changes can be avoided.

Chapter 3. Theoretical Framework and Methodology

Introduction

Following the findings of the literature review, this thesis aims to produce a new explanatory theoretical framework that can be applied to explain the paths and characteristics of the post-Mao national level legislative institutional development. In general, based on the reflections in the concluding section of the last chapter, the new theoretical framework will be effective if it has a strong explanatory capacity to explain the overwhelming majority of empirical data. In particular, it should give a tenable explanation for the basic characteristics of the 1980s NPC development and should have a high modifiability and relevance to the research of contemporary legislative development.

Correspondingly, this chapter sets influencers' 'intellectual background' as the logical starting point of the research. Based on which, this research discusses the intellectual perspective that is comprised of three variables. It also suggests the using of grounded theory as the research method. The last part briefly introduces the use of data.

I. Theoretical framework (1): function and institution

As the reviewing chapter shows, function and structure remain the most fundamental variables in the legislative studies, particularly the studies of the NPC. The proposed new theoretical framework sets function as a basic variable while replacing the variable 'structure' by 'institution'. That replacement widens the meaning of this variable while keeping its essence: any institutional design or established institution is structuralised, which includes intra-structure (e.g., the relationship between the NPC and the NPCSC), and inter-structure (e.g., the NPC – central government relation). Meanwhile, an institution may also contain other important factors that, while not belonging within the category of structure, may have equal importance, which can include agenda setting and institutionalisation of behaviour (particularly the establishment of procedural laws and regulations). This section first focuses on the basic relations of the two variables. Secondly, based on the basic legislative studies related theories, it lists specific NPC

functions and their corresponding indicators that can be used to identify the corresponding institutional designs.

1. Theoretical basis of the function leading principle

Function being the origin and dynamic of the NPC development not only has a greater explanatory power than the structural perspective, but, more importantly, is buttressed by rational choice institutionalism (RCI) that, as the following discussion shows, has strong explanatory capacity in explaining the institutional developments of the Communist China.

The development of the twentieth century institutional studies, particularly the rise of new institutionalism has produced three major branches having diversified focuses and approaches.[1] RCI is unique in (1) employing a set of behavioural assumptions; (2) seeing politics as collective action dilemmas; (3) emphasising the role of strategic interaction in the determination of political outcomes; and (4) explaining the origin of the institution *by stressing the function of the institution*.[2]

The function leading framework shares many common themes with RCI. The similarities come first from its emphasis on the NPC related actors' *demands of certain functions* that were the origin and dynamic of the 1980s NPC institutional developments.[3] Secondly and more importantly, the development of Chinese legislature was *rationally designed* by the actors. Thirdly, the proposed framework plans to explain the reasons for imbalanced institutional development by analysing the *rational gaming and interactions of the actors* whose functional demands differed from each other.[4]

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[1] Peter A. Hall and Rosemary C. R. Taylor, "Political Science and the Three New Institutionalisms" *Political Studies,* 44, no. 5 (1996): 936-57.

[2] Ibid." Barry R. Weingast, "Political Institutions: Rational Choice Perspectives," in *A New Handbook of Political Science*, ed. Robert E. Goodin and Hans-Dieter Klingemann, (Oxford; New York: Oxford University Press, 1996). The italic by the author.

[3] Compared with structural perspective, seeing functional demand as the dynamic of the institutional development has a stronger explanatory capacity to empirical evidence. For example, Cai's research mentioned that the number of NPC deputies was determined by the capacity of conference hall (Before moving to the People's Great Hall, the size of NPC deputy was about 1000, which was the maximum capacity of the old hall). The behind logic of this finding was that the institutional design should reflect the demand for the NPC to illustrate a high representativeness. In this case, the functional demand determined structural change.

[4] Such a similarity can be more saliently observed from Peters' research that lists at least three essential features of the rational choice institutionalism; all of which are quite similar to the basic characteristics of the function leading principle. See B. Guy Peters, *Institutional Theory in Political Science: The New Institutionalism,* (London; New York: Pinter, 1999). p. 61-62

It is important to show the reasons why RCI is an effective approach to studying Chinese political development: because of the abovementioned similarities, doing so may indirectly justify the adaptability of the function leading principle. Empirically, the importance of RCI in the research of post 1949 Chinese political development has been justified by several pioneering researches.[5] Theoretically, the RCI can be used in a research with a crucial prerequisite that the institution under scrutiny is designed from a '*tabula rasa*', meaning previous institutions have little influence on the following one, which magnifies the impact of the new designs determined by their restrictions and motivations.[6] Another theoretical prerequisite is that the actors should have clear and differentiated preferences that enable 'gaming' between each participant.[7] Based on which, scholars further claim that the chances of getting information are the key factor in shaping preferences.[8] As latter chapters show, events that occurred in the 1980s perfectly met those prerequisites.

The methodological difficulty in taking other branches of the new institutionalism approach to the studies of the NPC further highlights the adaptability of the function leading principle. Historical institutionalism, as another influential branch of the new institutionalism, emphasises historical evolvement of an institution by using the concept of 'path dependence' that involves two specific concepts: a) the 'self-reinforcing' or 'positive feedback' – actors on the rail of certain 'path' would find it difficult to change their ways; b) the 'timing sequence' – "timing and sequence of particular events or processes can matter a great deal".[9] These two concepts are obviously not suitable to be used to studying the post-1949 institutional developments, for such developments were completely 'derailed' from its previous track.

On the basis of the theoretical reflections and the empirical findings in the reviewing chapter, the basic relationship between the two variables can be shown below (figure 4):

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[5] Tang Tsou, *Twentieth Century Chinese Politics,* (Hong Kong: Oxford University Press, 2000). p.23; Minxin Pei, *China's Trapped Transition : The Limits of Developmental Autocracy,* (Cambridge, Mass.: Harvard University Press, 2006). p. 95.

[6] B. Guy Peters, *Institutional Theory in Political Science: The New Institutionalism,* (London; New York: Pinter, 1999).p. 50.

[7] Kenneth A. Shepsle, "Rational Choice Institutionalism," in *The Oxford Handbook of Political Institutions*, ed. R. A. W. Rhodes, Sarah A. Binder, and Bert A. Rockman, (Oxford; New York: Oxford University Press, 2006).

[8] Kenneth A. Shepsle, "Studying Institutions: Some Lessons from the Rational Choice Approach " *Journal of Theoretical Politics,* 1 (1989): 131-47.

[9] Theda Skocpl and Paul Pierson, "Historical Institutionalism in Contemporary Political Science," in *American Political Science Association Meetings* (2000). Also, Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics " *The American Political Science Review,* 94, no. 2 (2000): 251-67.

Figure 4: *Basic function-institution relationship under the function leading principle*

| Functional demands | ⟹ | Institutional designs based on functional demands | ⟹ | Institutionalisation of the institutional designs finally shape the legislative institutional settings |
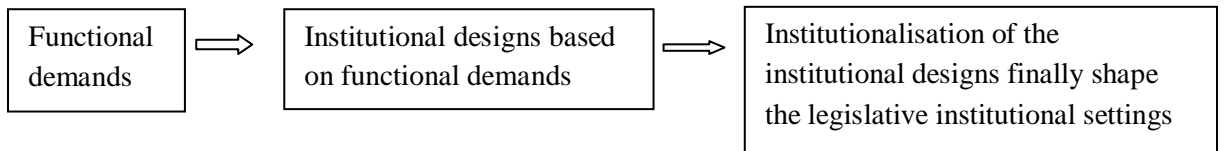
Figure by author

2. Functions and indicators of corresponding institutional changes

There is numerous research of legislative functions; however, because of Chinese legislature's unique Communist style, many findings cannot be directly applied without certain changes. Official documents confirm that the NPC has four basic functions: law-making, representation, supervision, and decision making.[10] Foreign scholars may also highlight the NPC's legitimacy provider function.[11] Based on the existing legislative studies literature mentioned in the below discussion, this section generates a new list of NPC functions. This section also aims to reveal a series of indicators that can be used to measure whether, and to what extent, a specific function demand was responded to by the designing and advocating of certain new institutions.

(1) Decision-making

Decision-making is always the legislature's most fundamental function. Interestingly, research of legislatures on a comparative basis prefers the term policy-making;[12] whereas research focusing on Chinese legislature prefers the term law-making.[13] In this research, two functions in Chinese official rhetoric – law-making and making decisions on critical issues – are treated as two branches of the decision making function.[14] It is worth highlighting that in this thesis the function of making decisions on critical issues

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[10] The most remarkable evidence is the annual work report of the NPCSC that reports its works and progresses in the category of the four functions respectively. Most of the Chinese research works also follow this category.

[11] For example, Donald Gasper, "The Chinese National People's Congress," in *Communist Legislatures in Comparative Perspective*, ed. Daniel N. Nelson and Stephen White, (Albany: State University of New York Press, 1982). p.185.

[12] Philip Norton, "Parliament and Policy in Britain: The House of Commons as a Policy Influencer" *Teaching Politics,* 13, no. 2 (1984): 198-202; Michael L. Mezey, *Comparative Legislatures,* (Durham, N.C.: Duke University Press, 1979). Part II; Michael L. Mezey, "The Functions of Legislatures in the Third World" *Legislative Studies Quarterly,* 8, no. 4 (1983): 511-50.

[13] For example, O'Brien, *Reform without Liberalization*.

[14] Scholars such as Packenham also sort the law-making function into category of legislature's decisional function. See Robert Packenham, "Legislatures and Political Development," in *Legislatures in Develoment Perspective*, ed. A.Kornberg and L.D.Musolf, (Durham, NC: Duke University Press, 1970).

is given the name of 'giving assent on critical issues and personnel decisions function ('assent-giving' in short)'. This change of terminology aims to echo the fact that the growing passivity of the modern legislatures has made the decision making process a passive assent giving process – the legislatures do not make decisions, they merely assent to decisions made by other institutions. [15]

For the law-making function, the most crucial and effective indicators are the quantity and quality of the making of new laws. Previous research use three indicators to measure the strength of the law-making power: initiating, modification, and rejection.[16] Any institutional design aiming to strengthen them can be identified as a response to the demand for the law-making function. It is worth highlighting that for the NPC, the initiating power of the Western concept does not exist and should be replaced by measuring the autonomy of creating a Law-making Plan (*Lifa Guihua*) and the extent of delegated legislation. The assent-giving function is strengthened if deputies can be given genuine and unprejudiced information, and can freely decide whether an assent should be given.

As a crucial measurement in measuring the decision making function, 'viscosity' can be an ideal indicator. [17] However, changes on its specific measurement method are necessary in the case of NPC because: (1) the length of legislative debate is fixed as the agenda setting is not flexible; (2) there is no 'opposition side' in Chinese legislature, therefore, 'number of opposition amendments passed' are not measurable; also, (3) the number of opposition bills is also not available. In this thesis the legislative viscosity in China is measured by considering to what extent can the NPC resist (by modifying, tabling, or rejecting) the decisions made by the government.

(2) Representative function

According to Xia and O'Brien, a typical sign of a weak representative function is that the NPC acts only as an agent or an information broker; an increase in the representative function can be confirmed by an increase of the remonstrative deputies (both in

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[15] Norton, "introduction", in Philip Norton, *Legislatures,* (Oxford ; New York: Oxford University Press, 1990). See also James Bryce, *Modern Democracies,* (New York: The Macmillan Company, 1921).

[16] Jean Blondel, *Comparative Legislatures,* (Englewood Cliffs: Prentice-Hall, 1973). p.199-200; see also Norton 1984, Mezey, 1979. The terms those literatures use are vary (e.g., 'modification' or 'reaction'), but the meanings are largely similar.

[17] Jean Blondel, "Legislative Behaviour: Some Steps Towards a Cross-National Measurement," in *Legislatures*, ed. Philip Norton, (NY: Oxford University Press, 1970). Viscosity is to measure to what extent a legislature can alter or make changes to government bills.

numbers and activities). Similarly, the strengthening of deputy-voter ties that gave deputies more bottom-up support, and an increase of the deputy accountability that may 'force' deputies to act as a remonstrator, may also strengthen the representative function.

Introducing PMBs is the primary way for the deputies to influence politics. Its qualitative and quantitative increase, as well as the growing 'weight'[18] directly indicates an increase of the representative function. In addition, the quality of deputies, such as their educational background and training in the legislature, has a strong linkage to the strength of the legislature's representative function,[19] thereby making it an indicator and identifier of any institutional designs aiming at improving the representative function.

(3) Supervisory function

According to the 1954 Constitution, the supervisory function of the NPC had two focuses. Firstly, the NPC was authorised to examine governmental processes and outcomes. Secondly, the NPC was also given a role of regime 'failsafe'. These two focuses constituted the two specific functions. For the former one, according to a review of the pioneering research, the greatest hindrance to an increase in effective examination of governmental processes and outcomes was the NPC's lack of sufficient institutional support (e.g. no corresponding procedural laws or regulations). Correspondingly, any institutional reform aiming to give the NPC more institutional support can be identified as a response to the demand for the 'examination of government work' function.

The demands for the 'regime failsafe' function can be clearly seen in the Constitution. For example, the NPC has the authority to annul any governmental regulations,[20] and recall or remove any governmental officers.[21] The NPC also has a preclusive power to declare war, launch wartime mobilisation, and enable martial law.[22] It can be said that a properly functioning NPC would automatically be a failsafe because it provided a safety valve to prevent any prerogative use of power, any critical decisions without mass support, as well as any decisions that would endanger the regime.

This function can be fulfilled only if the NPC's 'supreme' post in the regime's power sequence is institutionally guarded; and a particularly important indicator is to compare

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[18] It may include: (1) a greater power in forcing certain department to respond; (2) any perfunctory response that fails to satisfy the PMB introducer would be rejected and re-accessed.
[19] For example, Nelson Polsby, "The Institutionalization of the U.S. House of Representatives," *The American Political Science Review*, issue 62, no. 1 (1968): 144-68.
[20] 1954 Constitution, Article 31: 6 - 7; 1982 Constitution, Article 67: 7.
[21] 1954 Constitution, Article 28: 1-5; 1982 Constitution, Article 63: 1-5.
[22] 1954 Constitution, Article 31: 16-18; 1982 Constitution, Article 67: 18-20.

that post between the party and the NPC: if the party's post is predominant, the NPC cannot enact a failsafe function. Meanwhile, the NPC's own 'structural strength' is also a critical measurement. This term refers to how firm is the institution, and whether it could survive and properly fulfil its functions when infringed upon by other institutions. For example, if a legislature can be easily removed by military force, it certainly could not protect the civil regime against infringements during a military coup.

(3) Legitimising function

Although appearing in various forms, the legitimising function is widely recognised in legislative studies.[23] Packenham provides a dichotomy of that function: the 'latent legitimising function' legitimates the government in power at the time, whereas the "manifest legitimising function" legitimates all legislative measures.[24] According to Packenham, both functions contributed to the legitimacy of Brazilian regime that was regarded as an authoritarian regime lacking legitimacy from democratic political institutions.

This research further develops Packenham's dichotomy in identifying two different levels of legitimacy, which resulted in the bifurcation of the 'legitimising policy' function and 'legitimising the regime' function. 'Legitimising the regime' to some extent corresponds with the Weberian legitimation theory which claims that in a well institutionalised regime with legal-rational basis, the daily operation of the institutions would automatically generate legitimacy for the regime.[25] Whereas 'legitimising the policy' requires only the legislature to endow the policy with legitimacy; in such circumstance, the legislature passively assents to bills, empowers them, and transforms them into firm legislation; however, that process does not make the regime more legitimate as that procedure largely lacks legal constraint of both the authority and rational scrutiny. Therefore, it is obvious that the two functions are never equal: a legislature that legitimises policy can be seen as a minimal expression of the legislatures' legitimising function. Legitimising the regime is a higher quality and value function.

The key indicators linked with the legitimising regime function are the degree of transparency, accessibility, and mass participation; the three factors which are the core

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[23] E.g. in Mezey's work it is called "system-maintenance". In Mezey, *Comparative Legislatures*. p.26-27; see also Michael L. Mezey, "Parliament in the New Europe," in *Governing the New Europe*, ed. Jack Ernest Shalom Hayward and Edward Page, (Durham, N.C.: Duke University Press, 1995).
[24] Packenham, "Legislatures and Political Development."
[25] Max Weber, *Economy and Society; an Outline of Interpretive Sociology,* (New York: Bedminster Press, 1968).

values of representative democracy. A legislature cannot be a regime legitimacy provider unless it helps to increase democracy, and the masses can thereby (1) be fully informed of what has happened in the legislature; and (2) be able to input their wishes to the legislature, which relies on their participation related settings. Consequently, it would be impossible for a legislature closed to public access and participation to generate regime legitimacy.

II. Theoretical framework (2): intellectual background

To cite Hintzen's reflection on O'Brien's research, the widely applied institutional perspective focusing on legislative functions and institutions resulted in the overlooking of many non-institutional factors that shaped an institution.[26] It is particularly true in China where the non-Western institutional settings and unique political culture lack a tradition of institutionalising public life, allowing the effectiveness of many unseen and hidden factors in the process of institutional change. Therefore, it is necessary that research introduces a new variable that links society-wide factors and the development of a specific institution.

1. Defining the intellectual background

Perhaps the most typical characteristic of Chinese politics is the strong impact of the reform influencers' mind or consciousness factors rather than their concern with any established institution; particularly so in China during the 1980s when the whole society was undergoing a huge transformation. In his well recognised study revealing the close links between social transition and the transformation of ideas, Mannheim offers the following reflection:

> *Only when horizontal mobility is accompanied by intensive vertical mobility, i.e. rapid movement between strata in the sense of social ascent and descent, is the belief in the general and eternal validity of one's own thought-forms shaken.*[27]

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[26] Hintzen claims that the students of the PCs must consider the "*Chinese set of values concerning social change*"; see Geor Hintzen, "Book Review: O'brien "Reform without Liberalization" " *China Information,* 6, no. 75 (1991).

[27] Karl Mannheim, *Ideology and Utopia,* (London and Henley: Ed. Routdlege and Kegan Paul Ltd.,

There has been much research of Chinese politics that take similar perspectives; the most typical being the ideological perspective. These works have successfully justified the significant role that a consciousness factor has played in Chinese politics.[28] Some scholars even see the changes of ideas as a key or a prerequisite of the institutional changes in China.[29]

Regarding terminological matters, various terms have been used in the related pioneering researches. The most widely adopted terms are 'ideology', 'political culture', and 'public opinion'. Instead of those, this research borrows the term 'intellectual background' from related pioneering research to illustrate the impact of intellectual factors on institutional development. In the thesis, the term "intellectual background" refers to 'somebody's set of perceived ideas that are salient enough to be a background in shaping his or her attitude and preference toward certain public or political issues, including the designing of the institutions. To quote Mannheim, it is a focus on "*the sociological concept of thought*", which means "*not how thinking appears in textbooks on logic, but how it really functions in public life and in politics as an instrument of collective action*".[30]

The reason and advantage for borrowing the term is that it minimises terminological misunderstandings: previously adopted terms largely refer to the outcomes of the consciousness but not the consciousness itself. An example is the aforementioned Min's survey on the 'rule of law' concept of ordinary Chinese citizens, which does not go further to explore the intellectual reasons for the insufficiency or distortion of this concept. This is also observable from the review of the pioneering research taking an ideological perspective: the ideological changes highlighted by pioneering research, including the release of ideological control, the rise of pluralist ideas, and, perhaps the most important, the emergence of an ideological diversification between the official and

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1979 [1936]). p.6.

[28] Tang Tsou, *The Cultural Revolution and Post-Mao Reforms: A Historical Perspective,* (Chicago: University of Chicago Press, 1986). p.8. Kenneth Lieberthal and Michel Oksenberg, *Policy Making in China : Leaders, Structures, and Processes,* (Princeton, N.J.: Princeton University Press, 1988). p.158; Franz Schurmann, *Ideology and Organization in Communist China,* (Berkeley: University of California Press, 1968). For early and basic theoretical explorations, see Gabriel Almond and Sidney Verba, *Civic Culture,* (Princeton: Princeton University Press, 1965). p. 32; Almond, Gabriel A. Almond and Sidney Verba, *The Civic Culture Revisited,* (Newbury Park: Sage Publications, 1989). p.113.

[29] E.g. Stephen White, *Communist and Postcommunist Political Systems : An Introduction,* (New York: St. Martin Press, 1990). James R. Townsend, *Politics in China* (Boston: Little, Brown, 1974). Lubman, "Studying Contemporary Chinese Law: Limits, Possibilities and Strategy".

[30] Mannheim, *Ideology and Utopia*. p.1.

the masses, are largely the expression and the result of the background change of social-wide consciousness.

The advantages from using the term 'intellectual background' has been testified to by the pioneering research focusing on the changes to prevailing consciousnesses in societies that were more fundamental than the changes of ideologies; one example comes from Kusin's attempt to explore the reason for the 'Prague Spring' from not only the perspective of the crisis of Communist ideology, but also from a survey of the much deeper changes of intellectual background, which included the rise of national awareness, humanistic philosophy, the crisis of official historiography, and other factors.[31] There are also several typical examples in which the intellectual background is used to echo the authors' attempts to reveal the roots of the changes of thought in deciphering the great social and political transformations in England, France, and America.[32] In addition, the overwhelming majority of the research of this kind are social-historical studies – focusing on the historical development of a society (which is quite similar to the work this thesis plans to do), they all exemplify the strong explanatory capacity of that perspective in explaining the development of a specific institution.

2. The basic three-variable framework

Combining the above discussed two variables and the intellectual background as the third, the task of revealing how the intellectual background impacted on the institutional development of the NPC can be contextualised into its impact on the shaping of the NPC development related participants' functional demands and institutional designs. The basic relationship, or the rudimentary framework, of the three variables is shown below (figure 5):

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[31] Vladimir V. Kusin, *The Intellectual Origins of the Prague Spring: The Development of Reformist Ideas in Czechoslovakia, 1956-1967,* (Cambridge University Press, 1971).

[32] Christopher Hill, *Intellectual Origins of the English Revolution,* (Oxford: Clarendon Press, 1965). Barry Garnham, *The Intellectual Background of the French Revolution: Original Texts of 'Les Idéologues'* (Lewiston E. Mellen Press, 2007). Bernard Moser, *The Intellectual Background of the Revolution in South America 1810-1824,* (New York: Russel and Russel, 1966). Samuel Bernstein, *Essays in Political and Intellectual History,* (Freeport, N.Y.: Books for Libraries Press, 1969). Staughton Lynd, *Intellectual Origins of American Radicalism,* (New York: Cambridge University Press, 2009). Similar examples can also be observed from many researches in *The Cambridge History of China*, such as Vol.1, Chapter 12.

Figure 5: *The intellectual-institutional framework*
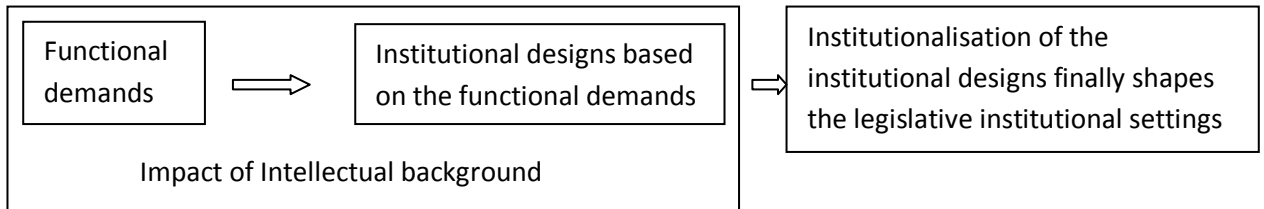
Figure by author

III. Research method: three layers

The complexity and, to some extent, ambiguity, of research methods constitute a considerable challenge for any social science research. The research methods of this thesis is shown in this section by three layers, which are (1) superficial layer that focuses on methods of data collection, (2) medium layer that focuses on methods of data analysis, and (3) core layer that focuses on methods of logical reasoning.

1. Methods of data collection

Two types of empirical data are used in this thesis, which are interviews and documentary evidence. Regarding interviews, seventeen interviews were conducted.[33] Interviewees are selected by non-probability sampling. Although this method bears higher risk of causing sampling error than probability sampling method, the latter is not taken because of the difficulty to create a sample frame that is enough large for this method.

Two strategies are taken in this research to reduce the potential damage of sampling error to the research findings. The most widely adopted strategy is to double check the information revealed in interviews. In this thesis, findings from interviews are normally

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[33] According to Burnham, a minimum sample size of twenty to thirty is required for a project in which elite interviews is its principal method. See Peter Burnham, *Research Methods in Politics,* (New York: Palgrave Macmillan, 2008). In this research, interviews are just one of the research strategies, and the final conclusion is not based only on them, thereby tolerating a smaller sample size.

double checked by the findings from documentary data. [34] The use of systematic analytic methods (will be mentioned below) increase the credibility of the findings from documentary data, which thereby secured the credibility of interview findings. Another strategy is to apply the 'stratified random sample' method.[35] Under the guidance of this method, the NPC deputies' diversity in social background, particularly their professional diversity, is considered in the selection of interviewees, which ensures that the selected interviewees cover all major professions of the NPC deputies. For the selection of interviewees from other group of reform participants (the grouping of reform participants is introduced in chapter six), this research also tries to ensure that interviewees cover all those groups.

Interview questions are semi-structured. About seven themes relating to the research questions are created (for example, one of the theme focuses on evaluating the interviewees' belief in nationalism and its linkage to their attitude to the NPC reforms); each theme is further developed into several interview questions. Those questions just offer a broad framework; during each interview, the interviewees were normally invited to expand their idea or offer some specific examples. Some questions might be further developed to get in-depth information. To be required by most interviewees, interviews were not recorded by audio but by written transcripts. The interviewer deliberately controlled the pace of interview to get enough time for recording.

Regarding the documentary data this research observed, they can be sorted into three categories by accessibility. Four types of sources are fully accessible: (1) official newspapers and periodicals; this type of evidence on which this research depends includes *Renmin Ribao* (RMRB, literally 'people's daily'), *Hongqi* (Red Flag), *Xinhua Yuebao* (Xinhua monthly), *Xinhua Wenzhai* (Xinhua Digest), and *Beijing Review (BR)*. All of which are either under the direct control of the Central Party's propaganda department or run by official newsagents or publishers also controlled by the propaganda system. (2) Selected writings of senior leaders: normally those leaders at the top of the political power pyramid have had their selected writings openly published, which include the writings of Deng Xiaoping, Peng Zhen, Qiao Shi, and others. (3) Loosely controlled academic journal articles and other publications, which are

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[34] An example of this method in the research of Chinese politics can be found in Sun, "Party and Parliament in a Reforming Socialist State". P. 40.

[35] This method belongs to the category of probability sampling. It stresses that individual cases in a sample frame may be stratified and cases from each of the resulting strata should be selected. See Alan Bryman, *Social Research Methods (2nd. Edition)*, (Oxford: Oxford University Press, 2004), pp. 92-93.

accessible in major libraries and many university libraries; they are also available through internet database. This type of data is an ideal source for probing the ideas of the intellectual elite. (4) Official reports and Gazettes: those documents are well archived and preserved. Examples in point are three documentary compilations of major NPC related documents, which are perhaps the most crucial sources of primary data used in this research.[36]

The major problem when using the four categories of data is not their accessibility but their reliability. The abovementioned "double-checking data reliability" strategy is considered to be essential in this type of data.

Documents that are 'partially accessible' means that part of the documents and information sources cannot be directly accessed or researchers may risk being denied access. Generally, two types of sources are in this category: (1) academic translations and writings, which are important for probing the importation of foreign intellectual ideas. They can be obtained easily, but in order to evaluate their effect on 1980s institutional development, researchers need further background information; (2) underground publications: these are strictly censored by the government authority, which significantly reduced their accessibility. However, this censorship can be partially dealt with by several strategies.[37]

Due to political and institutional reasons, certain documents that are of vital importance in the legislative study are not available in China. Any legislative Hansard of debates within the People's Congress conference, as well as the compilations of deputies' PMBs, are not accessible (and perhaps do not exist); the only available replacements are several less reliable personal recollections written by Congress deputies, such as Zhang.[38] Due to a lack of key statistics, some areas of planned research have been abandoned. However, it is worth highlighting that the negative impact of the lack of key data is not

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[36] They are (1) Research Section of the NPCSC General Office, *Documentary Compilation of the People's Congress System (1949-1990) (Zhonghua renmin gongheguo renmin daibiao dahui wenxian ziliao huibian).* (Beijing: Democracy and Legal Press, 1990). (2) Liu, zheng and Cheng, Xiangqing, *Encyclopedia of Institution-Related Works of the People's Congress 1949-1998 (Renmindaibiaodahui Zhidu Gongzuo Quanshu)*, (Beijing: Law Press, 1998). (3) Research Section of the NPCSC General Office, *Handbook of People's Congress Works (Renda Gongzuo Shouce)*, (Beijing: Democracy and Legal Press, 1997).

[37] Major strategies used include (1) accessing them at the National library, (2) obtaining a photocopied version from personal or academic collections, and (3) obtaining an electronic copy from outside mainland China to avoid webpage censorship.

[38] Youyu Zhang, "*Shi nian jing zhao* (Ten years in Beijing)" in Beijingshi Zhengxie Wenshi Ziliao Weiyuanhui (ed), *Compilation of Historical Archives in Beijing (Beijing wenshi ziliao)*, (Beijing: Beijing Press).Particularly part four.

as significant as it may appear. For example, a Hansard of debate is not greatly significant as the 1980s People's Congress debates were merely nominal. Table 2 lists major sources applied in the researches on each of the reform influencers.

Table 1: *Sources and evidence used in the research*

Group of people	Types of data applied	
Power holders	• Official published selected writings • Official documents and official controlled media	• Newspapers and periodical articles • Published academic research findings
NPC deputies and staff members	• Primarily depends on interviews • Published writings, particularly the recollections and biographies • NPC Archives	
Intellectual elite	• Academic writings or translations • Edited journals and newspapers • Interviews	
Grass roots reformers	•17 Volumes *Collection of mainland underground publications* • Personal writings and recollections (many of which are banned from being printed and are only available through internet)	

Table by the author

2. Methods of data analysis

Data analysis methods in the research of interview data are largely qualitative. The analysis focuses on probing interviewees' attitude and identity. It also focuses on interviewees' rhetorical details and use of emotional words or metaphors. Meanwhile, this research tries to reveal the similarities and diversity between the interviewees' responses. Interviewees' attitude and identity were used to explain their diversified responses (e.g. educational background are used to explain that two interviewees complained about having little decision-making power while others not). These analytical strategies are generated from basic methods of discourse analysis that highlights (1) not using coding to analyse data, (2) the importance of understanding the situational specifics of talk, and (3) the analysis of the background attitude and identity of talks or speeches. [39]

Regarding the documentary data, two methods of analysis are used. The one is qualitative content analysis (also called as ethnographic content analysis). It is a method on 'discovery and description, including search for contexts, underlying meanings, patterns, and processes, rather than mere quantity or numerical relationships between

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[39] Details of discourse analysis can be found in Bryman, *Social Research Methods*, pp. 369-71.

two or more variables'. [40] This method is used in the analysis of documentary data including personal recollections, speeches of the power holders and other key figures, as well as speeches and writings spread via unofficial ways, particularly those materials made for the purpose of advocating democracy (e.g. candidate deputies' campaigning speeches in university campus, and wall posters).

Meanwhile, content analysis is used. Its quantitative character gives research findings a high credibility. In this thesis, words and phrase count and numerical measure of textual expression, two important strategies of content analysis, are applied to the documentary analysis. The use of this method requires a higher 'quality' of primary data; in particular, data should be consecutive (e.g. newspapers or journals published in a consecutive period, rather than articles randomly collected) and enough large (e.g. it cannot be a single journal article or a speech) to avoid sampling error that, because of this method's quantitative character, may remarkably damage the explanatory capacity of the research findings. Because of this character, this method is used to the analysis of newspapers published in a selected period (People's Daily, Workers' Daily, and the World Economic Herald), and the compilation of underground publications. Findings generated by this method, with its high credibility, play an important role in the 'double checking research findings' strategy.

3. Methods of logical reasoning

This layer refers to the method of using the findings revealed in the abovementioned analysis process to generate conclusions or respond to research question. A basic dichotomy in this area is the 'hypothesis - analysis of primary data - confirm (or rejection) of hypothesis' approach and 'primary evidence - research finding' approach. The former one is known as analytic induction approach, while grounded theory (GT) is the most commonly seen approach of the latter one. Revealing only the sufficient conditions but not necessary conditions between independent variable and dependent variable, a significant character of the analytic induction approach, is the primary reason for this research to reject analytic induction approach while taking GT approach.

Research taking GT approach (1) does not adopt any established conceptual frameworks; (2) does not make any specific hypothesis; (3) attempts to reveal or refine a new framework by repeating the process of a) coding (partially means gathering) evidence, b)

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[40] Ibid. pp. 392-93.

analysing evidence, c) producing or refining theory, d) gathering more evidence.[41] The so doing therefore generates a well-refined theoretical framework having maximum explanatory capacity in the final 'sorting' stage.[42] This thesis largely adopts those basic procedures but has some differences in obtaining empirical evidence. Classic grounded theory stresses that all empirical evidence should be based on primary sources. In this research, instead, the literature review that generally observes relevant research can be seen as an open coding process,[43] which is not only based on the secondary data (academic research), but also generates a rudimentary framework; therefore the empirical study aims largely to refine that framework rather than create a new one. The designing of research on the basis of the grounded theory is shown below (table 2).

Table 2: *Research designs in the grounded theory (GT) context*

Steps	Things to do	Corresponding process in the GT context	Outcomes or findings
1	Reviewing the literature and building the new framework on its findings.	Open coding	Suggests the 'intellectual background' as an important variable in examining the Chinese legislative development; and the shape of the rudimentary three-variable framework.
2	Based on the empirical evidence, examines how each influencer's intellectual ideas determined their NPC related functional demands and institutional designs.	Selective coding[44] and theoretical memoing	Reveals the intellectual-institutional linkage of each group of reform influencer
3	Findings in step 2 are compiled together in revealing the general mechanisms	Sorting stage based on the 'memos'	A refined theoretical framework revealing the impact of intellectual ideas on the NPC reform is generated

Table by author

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[41] This stage is called "theoretical memoing", which refers to the process of theorising or summarising the findings of the coding process. See Anselm Strauss and Juliet Corbin, "Grounded Theory Methodology: An Overview," in *Handbook of Qualitative Research*, ed. Norman K. Denzin and Yvonna S. Lincoln, (Thousand Oaks: Sage Publications, 1994). pp. 273-85; Barney G. Glaser, *Basics of Grounded Theory Analysis,* (CA: Sociology Press, 1992).

[42] Sorting means to put fragmental data together, making comparisons between them, which facilitates the generating of a final theoretical framework.

[43] Lisa M. Given, *The Sage Encyclopedia of Qualitative Research Methods,* (Los Angeles: Sage Publications, 2008). p. 375.

[44] Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research,* (Chicago: Aldine Pub. Co., 1967). p. 45.

Chapter 4. NPC Related Intellectual Backgrounds

Introduction

This chapter illustrates the intellectual background that was responsible for the legislative development in the 1980s. Firstly, it discusses two basic communist intellectual doctrines:[1] class struggle and 'consciousness enlightenment', as well as its resulting idea of 'education and implanting'. These doctrines are presented by showing their original pattern, early practices in the Soviet Union, and their importation as well as transition in China. It is worth mentioning that these two are not the only Marxist basic doctrines. They are highlighted in this research because (1) they are the two foundations of the classic Marxist political doctrines (other doctrines are largely about epistemology, history, and economy); (2) they were the guiding principles of Lenin's practice of building the new regime, and therefore (3) they are closely linked to the institutional designs of all Communist institutions, including the PCs. It is also worth mentioning that in depicting their original meaning, the works of Lenin are given more focus than that of Marx, for it was Leninism that strengthened, amended, and, more importantly, practised Marx's philosophical doctrines, and thereby Lenin's ideas had a greater impact on the institutional designs in China.[2]

This chapter also focuses on several domestic political thought, particularly the nationalism and a demand for an authority. Based on the revealing of this thought, this chapter focuses on two specific topics, namely, (1) the effect of domestic political thought in strengthening the Marxist vanguard consciousness, and (2) the 'rule by law' concept.

The concept 'Western political system' is widely used in this chapter. Despite the kaleidoscopic varieties of specific Western political systems, in this research, this concept refers to (if not specifically pointed out) the British Parliamentary system and the American presidential system. The reason for stressing those two systems is that in

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[1] They are called *doctrines* in this chapter because they were sophiscated and were very rigidly studied in the early period. However, in the post-1949 China, they were gradually simplified into two principles or a slogan-type propaganda – although they were used everywhere, most people did not know their exact meaning. Therefore in the following chapters they were called two intellectual *tenets*.

[2] The CPC identifies the diversity of Marxism and Leninism that the former one is 'world of view' and the later one is a vital foundation of the whole organisation. See, Schurmann, *Ideology and Organization in Communist China*. p21.

China's official rhetoric, those two systems are always cited to illustrate the typical 'Western bourgeois political system'; therefore, their meaning was largely interchangeable.

I. Class Struggle

The theory of class struggle has always been the most crucial part of the Marxist doctrines and the symbol of Communism and the communist regimes.[3] Once a Communist movement seized political power and started designing its own institutions, the class struggle doctrine became its principal guideline. Its effects are ubiquitous in Communist states.

1. Theoretical origin and development

In classical Marxism, the concepts of the class-based society and the class struggle are the foundations of the class theory. Such foundations have been well established by the works of Marx, Engels and other Communists theorists. In the works of Marx, the productive relations (the manner of allocating the means of production) create two classes, one controls the means of production and one not. Engels then notices that the difference between two classes made the conflict inevitable and finally led to the establishment of the regime, as well as its institutions.[4]

In his *Preface of a Contribution of the Critique of Political Economy*, Marx named the whole productive relations as a 'base', based on which was the so called 'superstructure' – culture, state, political power, and particularly, institutions. The base-superstructure linkage stressed not only that the base conditionally determines the superstructure, but also that the superstructure influenced the base.[5] Based on which, Marx brought forward the prototype of proletariat democratic dictatorship, which was thought to be a principle of designing a proletariat superstructure (including the specific institutions) to support

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[3] Ronald J. Hill, *Communist Politics under the Knife,* (London; New York: Pinter Publishers, 1990). P.7.

[4] Eleanor B. Leacock, *introduction*, in Friedrich Engels, *The Origin of the Family, Private Property, and the State,* (New York: International Publishers, 1972). Esp. p. 46; Karl Marx and Frederick Engels, "Manifesto of the Communist Party (1848) " (in Marxists Internet Archive Library: http://www.marxists.org/archive/). Chapter 1.

[5] Karl Marx, *Preface of a Contribution to the Critique of Political Economy (1857-1858),* in Karl Marx Selected Writings, ed. David McLellan, (Oxford: Oxford University Press, 1875 [1977]). pp. 389-90.

the new proletariat base. Marx died before the establishment of the first proletariat regime in Russia and did not have an opportunity to design his ideal superstructure (although several endeavours were made in his discussions on the Paris Commune Movement). His contributions were to provide several principles for institutional designs. The most crucial one was the concept of abandoning all bourgeois institutions of political power, particularly the bourgeois legislatures. According to Marx, any compromise or attempt to capture political power without breaking the bourgeois political system was unrealistic.[6]

Marx's concept of the dictatorship of the proletariat was not practiced until Lenin. Generally speaking, Lenin's practice could be equated as a 'carrot and stick' strategy. To be specific, Lenin, on the one hand, emphasised that the institutional designs of the new regime should ensure that the bourgeois and other anti-proletarian classes had no opportunity to retake the superstructure. In doing so, a dictatorship was inevitable. It is worth mentioning that 'dictatorship' did not automatically mean the use of violence; instead, 'dictatorship' was normally practised by a series of preclusive institutional designs that ban certain group of people from participating in political life.[7]

On the other hand, a 'sweet carrot' was offered to the proletariats. In his *State and Revolution*, Lenin claimed that the proletariat, in the new established proletarian regime, enjoys 'unprecedented and genuine' democracy, which was a gigantic contrast with the bourgeois democracy:[8]

> *And so in capitalist society we have a democracy that is curtailed, wretched, false, a democracy only for the rich, for the minority. The dictatorship of the proletariat, the period of transition to communism, will for the first time create <u>democracy for the people, for the majority</u>, along with the necessary suppression of the exploiters, of the minority. Communism alone is capable of providing really <u>complete democracy</u>, and*

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[6] Karl Marx, "Critique of the Gotha Programme" in Ibid. pp. 564-68. Particularly, Marx criticises the *draft programme of the German United Workers' Party* that "its political demands contain nothing beyond the old democratic litany familiar to all: universal suffrage, direct legislation, popular rights, a people's militia." Ibid. p. 565.
[7] Vladimir I. Lenin, *The State and Revolution,* (London: Penguin 1917 [1992]). Chapter V.
[8] Vladimir I. Lenin, *The Proletarian Revolution and Renegade Kautsky,* (London: Lawrence & Wishart 1918 [1935]). pp. 23-32. See also Lev Nikolaevich Suvorov, *Marxist Philosophy at the Leninist Stage,* (Moscow: Progress, 1982). P. 123.

the more complete it is, the sooner it will become unnecessary and wither away of its own accord.[9]

2. Importation and transformation in China

The Chinese Communist party, since its establishment in 1921, developed in a society that was dramatically different from that of the Soviet Union. China had a non-industrialised society with small size working class and huge size peasant class. This difference was the direct dynamic of the changes made upon the classic Marxist doctrines. As a result, a widely noticed theoretical transition was made to add the peasantry and other classes in the category of the proletarian class. The resulting enlarged proletarian class provided the CPC with adequate strength in capturing political power. The specific work of enlarging and strengthening the proletarian class was called 'united front', which resulted in an onion-shape structure of classes.

Figure 6: *The 'concentric onion' model of the CPC's United Front structure*
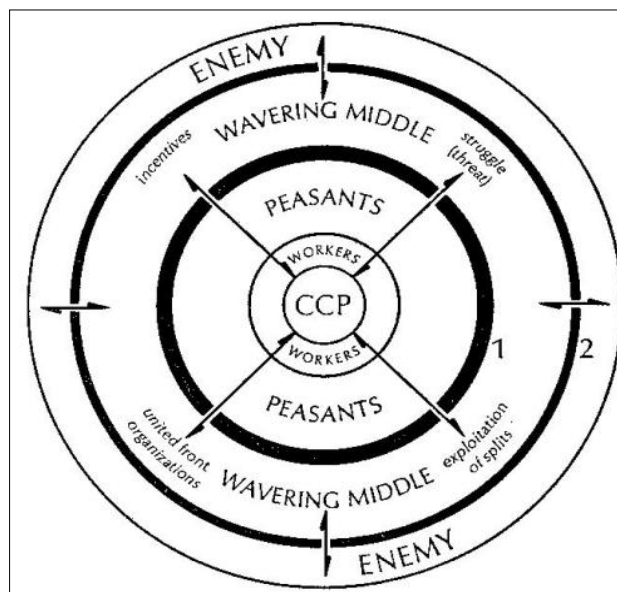
Source: VAN SLYKE, *Enemies and friends; the united front in Chinese Communist history,* (Stanford: Stanford University Press, 1967). p. 250.

As the chart shows (figure 6), the internal two concentric circles tightly covering the CPC core are the working class and peasants. A 'wavering middle' circle surrounds the

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[9] Lenin, *The State and Revolution*. Chapter V. The underlines are author.

three internal circles, its component changes from time to time, which gives it a 'wavering' nature: it normally consists of the intelligentsias and the pretty bourgeois class, but others may also be included or precluded by the Communist party when necessary.[10]

Therefore, the proletarian class in China was *de facto* a combination of various groups or classes, which was arguably the reason that Mao and other CPC central leaders used the concept 'people's democratic dictatorship' to replace the original 'proletariat democratic dictatorship':[11] the use of the term 'people' offered a much broader category to allow the acceptance of those classes and groups that can hardly be said to be the proletariat. This characteristic should be particularly highlighted for its great impact on the representative related legislative institutional design: the CPC claimed that, because each people have the same class attribute, there was no critical conflict of interests in the proletariat class. However, to be conflict free is not possible as the proletarian class is *de facto* combined with so many different people. In other words, having similar class attribute cannot deny the existence of conflicts between regions, professions, religions, and so on.

3. Effects

Known as the Communist regimes' guiding principle of institutional designs, the theory of class struggle resulted in two primary outcomes in China. One was that the CPC always tries to make China at least seeming to be more democratic than the bourgeois regimes. No matter what the category of 'people' consisted of, the 'carrot' must always be offered. Mao and other CPC's core cadres had an important task of making the masses realise that they were enjoying that 'higher' democracy, which was largely fulfilled by telling people the 'rule of minority' nature of bourgeois democracy and the authentic nature of Communist democracy. In doing so, democracy was divided into two types – substance of democracy (Minzhu de shizhi) and form of democracy (Minzhu de Xingshi). Since Marx, the Communist doctrines claimed that bourgeois democracy stresses only the form, namely, by a set of institutional designs shaping seemingly justice institutions, the bourgeois successfully hides its rule of very few

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[10] For the changes of the CPC's recognition of the composition of the proletarian class, see Lyman P. Van Slyke, *Enemies and Friends: The United Front in Chinese Communist History,* (Stanford: Stanford university press, 1967).

[11] Zedong Mao, *On the People's Democratic Dictatorship (1949),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/).

people who control the means of production. The most commonly mentioned example was the multi-party system, which was criticised as an institutional setting providing non-democratic regimes with a democratic guise. However, no matter which party rules, they speak for the bourgeois. Marxists believed that such an unfair design can be reformed only by stressing substantive democracy, which focuses on ensuring that the disadvantaged proletariat class seizes political power, while the 'reactive' bourgeois class should not.

For the legislative system, several principles were therefore established to practice the substance of democracy; the most crucial one was stressing the legislative deputy's class attribute. According to the Marxist theory, the deputy's proletariat attribute was an effective prevention for the bourgeois 'legislative trick', which meant, according to a well recognised Marxist epigram, that "*the oppressed are allowed once every few years to decide which particular representatives of the oppressing class shall represent and repress them in parliament*"; Lenin quoted the above saying and reconfirmed the importance of letting the proletariat represent the proletariat. Without that, Lenin believed, the proletariat had no chance of controlling their fate.[12] The specific institutional expression of that idea was the claim that the proletariat should have their proletarian deputies in the legislature. Therefore, stressing deputies' class attribute so as to show the advantage of Communist democracy is always a very important focus for a Marxist legislature. This idea can be contextualised to be the consciousness of descriptive representation in Pitkin's typology of the concepts of representation, which stresses that a deputy could represent the interest of certain group of people only if he or she belonged to, or had certain key characteristics of, this group.[13] This concept is vitally important for the studies of the NPC's representative function, because it legitimised the CPC's behaviour of manipulating the legislative deputy elections by allocating seats (a kind of quotas system). According to the CPC, allocating seats is quite reasonable for its purpose of positive discrimination. To be specific, it is claimed that disadvantaged classes had no chance to have their own deputies in bourgeois legislatures. To the contrary, in Communist regimes the Communist Party guarantees a

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[12] Lenin, *The State and Revolution*. Part 5.
[13] Hanna Fenichel Pitkin, *The Concept of Representation,* (Berkeley: University of California Press, 1967). p. 61.

certain proportion of deputies coming from disadvantaged classes, and (according to the concept of descriptive representation) they serve the interest of those classes.[14]

The class struggle doctrine had another effect in securing the CPC's dominance in all political institutions. Since the basic idea of this doctrine claims that the inimical and reactive classes were waiting for any opportunity to subvert the Communist regime and rebuild the bourgeois regime, it became the CPC's perfect pretext to prevent the rise of any challenging political force. A dictatorship can be imposed to them by simply declaring their 'inimical class' attribute.

However, scholars over-emphasising the class struggle doctrine's effect on strengthening the CPC's monopolised control of political power may result in a fatal omission of its another effect on encouraging, or even forcing, the CPC to offer a certain level of democracy to the people. For example, in many cases it was observed that the believers in the Marxist class struggle doctrines in the 1980s were deeply disappointed, because the promised 'higher democracy' became so weak and distorted. Consequently, many advocated some changes to increase democracy.[15]

II. Consciousness enlightenment and the vanguard concept

The doctrine of consciousness enlightenment and the resulting vanguard consciousness are another major doctrine of Marxism that had a great impact on the designing of the legislative institutions.

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[14] It is worth noticing that the real purpose of allocating seats was normally not positive discrimination. Many pieces of research show that the CPC did so in order to select subordinate deputies and maintain its firm control over the legislature (chapters seven to ten will specify this point).
[15] The most remarkable one is to criticise those institutional designs that set handicaps (in property, education, or other form) to hamper the masses' right to vote and to stand for election. E.g. Youyu Zhang, "The Hypocrisy of Bourgeois Democracy", in Youyu Zhang (ed), *Selected Research Writings of Zhang Youyu (Zhang Youyu Xueshu Lunzhu Zixuanji),* (Beijing: Beijing Normal University Press, 1992). See also, Sheng Hu, *From Opium War to May Fourth Movement (Cong Yapianzhanzheng Dao Wusiyundong),* (Beijing: People's Press, 1981). This book has been to some extent given an orthodox position by the authority.

1. Original meaning

Lenin was the first and the most important contributor of the consciousness enlightenment doctrine.[16] This doctrine, in the context of Lenin, consisted of several specific ideas; firstly, it claimed that the spontaneous labour movements cannot generate socialist ideas. Therefore, participants of the movement lacked guidance for any further plans and strategies. A proposition behind this claim was that the labour class were short-sighted in feeling satisfied with the limited gains of the trade-union struggle. Lenin believed that the resulting trade-unionism encouraged the labourer to engage in peaceful struggle within the framework of legislature that aimed at fulfilling certain expedient demands (such as working hour restriction and salary increasing) by occupying more seats in the bourgeois legislatures, rather than capturing political power and establishing their own institutions.[17]

Therefore, secondly, in ensuring that the labourer was enlightened by socialist consciousness, Lenin stressed that such a revolutionary consciousness should only be obtained from outside, by a process named implanting. Thirdly, Lenin emphasised that the implanting can hardly be successful without the impact of the intelligentsia who were the vanguard of the socialist revolution. This concept is particularly worth highlighting because of its strong linkage to the following empirical analyses. The concept of 'vanguard' had a very narrow meaning at the beginning. In Lenin's language, it meant that *"the workers were dependent on an external force – the radical bourgeois intelligentsia – to bring them the idea of socialism and to make them revolutionary"*.[18] It can be seen that the division of vanguard and the unenlightened commons drew a line based on intellectual standards. It confirmed that certain people should be endowed with more responsibility than others simply because of their advanced intellectual standard. According to history, after the Bolsheviks subverted the existing regime and started designing the new political system, such responsibilities evolved into political power and the vanguards evolved into the power holders. Understandably, the vanguard-unenlightened mass division gradually transformed into the ruler-subordinator division. In other words, the concept of vanguard legitimises political power and confirms its top-down direction, which meant power comes from the top, rather than the empowering of the grassroots masses.

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[16] For this process, see generally, Robert Mayer, "Lenin, Kautsky and Working-Class Consciousness " *History of European Ideas,* 18, no. 5 (1994): 673-81; Robert Mayer, "Plekhanov, Lenin and Working-Class Consciousness " *Studies in East European Thought,* 49 (1997): 159-85.
[17] Vladimir I. Lenin, *The Proletarian Revolution and Renegade Kautsky*. p. 38-44.
[18] Mayer, "Lenin, Kautsky and Working-Class Consciousness".

2. Importation and transformation in China

The translation and introduction of Lenin's writings in China started earlier than the establishment of the CPC. It may not be easy to confirm whether the CPC's early leaders had read these writings. However, one thing that can be confirmed was that the behaviour and strategies of the CPC since 1921 was an imitation of Soviet Russia that was settled by Lenin. Therefore it is not surprising that the soviet consciousness enlightenment doctrine can be seen everywhere in the CPC's own theories and guidelines. [19]

The motivation of the imitation was also the particularities of the Chinese society: in a peasant and agricultural society, protests were isolated and aimed merely at certain specific issues such as land rent reduction. The CPC's immediate task was to mobilise peasants, in which a vanguard-led-enlightenment strategy was created. In his *Report on an Investigation of the Peasant Movement in Hunan (hereafter: Peasant Movement Report)*, Mao already adopted and developed many preliminary ideas of the vanguard enlightenment. He noted that the emergence of the 'Peasant's Council (nonghui)' had successfully organised the previously isolated peasant discontents and grievances; the converging effect thus resulted in an unprecedented mass protestant movement, by which China's fundamental landlord-peasant system was abandoned. Mao stressed and appreciated the slogan *"all powers to the Peasant's Council"*, which can be seen as the embryo of the role of the NPC (as the highest organ of state power) and also as a result of the direct imitation of the Lenin's slogan *"all power to the soviets"*.[20] Mao believed that the impoverished peasants who had no private property at all should be the leaders of the Peasant's Council and lead the revolution, because these were the people who had the firmest class struggle and revolution consciousness. Clearly, in Mao's report, the peasant's council as an institution of politics that was shaped by the different classes should be led by a certain group of people whose leadership was legitimised by their advanced revolutionary consciousness.

The strong desire for party discipline was another major reason for the continuous development of the vanguard enlightenment doctrine. Perhaps the largest difference of

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[19] Some articles confirm such intellectual linkage, such as the impact of Lenin's *"Left-Wing" Communism, an Infantile Disorder* on Mao's concept of mass line. See, for example, Edward Hammond, "Marxism and the Mass Line " *Modern China,* 4, no. 1 (1978): 3-26.
[20] Vladimir I. Lenin, *April Theses,* (Moscow: Progress Publishers 1917 [1951]). pp. 5-10.

the CPC from a typical 'in-the-legislature' party, was that the CPC had twenty eight years history of being an anti-establishment organisation. During this period, violent struggle against central government and the KMT was a common occurrence. According to Lenin, violent struggle needed strong vanguard leadership, and a firm discipline secured the decisions of the leading vanguards to be resolutely implemented.[21]

Therefore it is not surprising that, following the *Peasant Movement Report*, Mao's other works that deeply influenced the intellectual development of the CPC showed that the vanguard enlightenment doctrine had been developed into a guiding principle early in the CPC's struggle for power in the Jiangxi and Yanan periods during which the party established its own regional anti-establishment regime.[22] In his writing during the Yanan period, Mao strongly emphasised the importance of the enlightened vanguard – the CPC cadres:

> *The great revolution needs great party and many great cadres… We need to cultivate many cadres, particularly hundreds of best mass leaders, by which our party can develop into a nation-wide… to cite Stalin's language, cadre means everything.*[23]

3. Impacts

The vanguard consciousness had at least two impacts on the related institutional designs; firstly, it emphasised the means of education and persuasion in solving the conflict of interests. Because of the Marxist ideas that (1) there should be no conflict of interests in the proletarian class, and (2) the masses lacked proper education to give them a series of 'correct' proletarian consciousness, CPC top leaders, particularly Mao, claimed that the

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[21] Cf, Vladimir I. Lenin, *"Left-Wing" Communism, an Infantile Disorder: A Popular Essay in Marxian Strategy and Tactics (1920),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/). Part 2.

[22] See Zedong Mao, *On Correcting Mistaken Ideas in the Party (1927),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/). Zedong Mao, "Bixu Zhuyi Jingjigongzuo (Economic Works Must Be Emphasized)," in *Mao Zedong - Select Writings, Vol. 1*, (Beijing: People Publishing House, 1990).

[23] Zedong Mao, *Win the Masses in Their Millions for the Anti-Japanese National United Front (1937),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/). The specific expression can be seen from the "mass line" concept; for specific studies, see Lewis John Wilson, "The Leadership Doctrine of the Chinese Communist Party: The Lesson of the People's Commune " *Asian Survey,* 3, no. 10 (1963): 457-64; Mao, *On the Ten Major Relationships (1956)*. Hammond, "Marxism and the Mass Line "; Stuart Reynolds Schram and Marianne Bastid, *Authority Participation and Cultural Change in China,* (Cambridge: at the University Press, 1973). P. 29.

conflicts were produced by the people lacking proper proletarian consciousnesses, and a proper education can 'enlighten' such consciousnesses. This idea can be observed from the CPC's very early documents. In Mao's writing *On the Correct Handling of Contradictions among the People*, people having conflicts were divided into 'right' and 'wrong' sides; the latter must be corrected by giving a right consciousness (in Mao's context, holding different views is a kind of "sickness" and needs to be "cured"). [24] Arguably, emphasising education and persuasion downgrades the importance of consensus;[25] marking conflicting two sides with 'right' and 'wrong' further negates the possibility of consensus, its direct outcome is the lack of related functional demand and thereby the lack of corresponding institutional designs (this point will be discussed in later chapters).

Meanwhile, this concept stressed the existence of a group of intellectually advanced vanguard. In institutional design, it led to a stratified political power pyramid, in which few vanguards enjoyed the right of making final decisions and ordinary members only offer suggestions or engage in other non-decisive functions. That idea resulted in another fundamental organisational principle of the Communist China referred to as 'Democratic Centralism'.[26]

The meaning of the principle, like other CPC core concepts, has been changing from time to time. According to Cai, [27] the CPC's early usage of this concept was dichotomous: on the one hand was democracy, in which the masses had full authority to choose and control political authority; on the other hand was centralism, in which a centralised executive power governed the state in accordance with the wishes of the masses.[28] This dichotomy evolved into a slogan in 1945 – "centralised on the basis of

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[24] Zedong Mao, *On the Correct Handling of Contradictions among the People (1957),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/). See also Stanley Lubman, "Mao and Mediation: Dispute Resolution in Communist China " *California Law Review,* 55, no. 5 (1967): 1284-360.

[25] In many cases, that education would have been evolved into a forced implantation, thereby political participations aiming to reconcile conflicts may become a forced participation in the form of social movement. According to White, Mao's preferred strategy of political participation is mass movement, which coincided with his dissatisfaction at the institutionalised political participation that may lead to bureaucratism. White, *Communist and Postcommunist Political Systems : An Introduction.* p. 123.

[26] 1954 Constitution, Article 1: 2.

[27] Dingjian Cai, *Institution of the Chinese People's Congress (Zhongguo Renmindaibiaodahui Zhidu),* (Beijing: Law Press, 2003). P. 83.

[28] Zedong Mao, *Interview with the British Journalist James Bertram (1937),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/). The masses' right to control the executive, according to Mao, is fulfilled by the organ of state power (the PCs) consists of the deputies they choose in elections.

democracy and democratic under centralised guidance". For its practice in the PCs related institutional designs, a 'classic' statement is that:

> *The organisational principle of the new-democratic state should be democratic centralism, with the people's congresses determining the major policies and electing the governments at the various levels. It is at once democratic and centralized, that is, centralised on the basis of democracy and democratic under centralised guidance. This is the only system that can give full expression to democracy with full powers vested in the people's congresses at all levels and, at the same time, guarantee centralized administration with the governments at each level exercising centralised management of all the affairs entrusted to them by the people's congresses at the corresponding level and safeguarding whatever is essential to the democratic life of the people.*[29]

However, having seized the political power in 1949, the CPC redesigned the political system, during which the balance – 'democracy' and 'centralism' in its two sides – gradually turned to be imbalanced. According to Cai, centralism was emphasised, while democracy became an instrument serving centralism, by which the meaning of democracy was narrowed down to merely 'let the masses criticise government, or let the people say'; its result was that this concept became a pretext for the cadres to commit arbitrary decision-making power.[30]

III. Domestic political thought

As the review chapter showed, the establishment of the Communist regime in 1949 did not result in an intellectual gap; therefore the impact of the domestic political thought must be considered in revealing the intellectual background of the institutional changes in the post-1949 period. Generally speaking, two sources are worth highlighting; the first one is the underlying and pervasive consciousnesses that were shaped during China's thousand year history. The second one was the changes in thought during the great social transformation after 1840. To use Townsend's language, during this period a 'thousand-year tradition' was challenged and forced to change. The transformation

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[29] Zedong Mao, *On Coalition Government (1945),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/).
[30] Cai, *Institution of the Chinese People's Congress*. p. 85.

was so swift that a wholesale social crisis was created and various strategies had been applied to avoid the so called 'peril of national extinction'.[31] Certain ideas during this period are worth highlighting because they significantly influenced the thought process after 1949.

1. The heritage of thousand year absolutism

The influence of traditional Chinese thought over the Communist politics in China is a warmly debated topic.[32] Illustrating the historical origin of some post-1949 institutional characteristics that had a peril of getting lost in the extremely complicated 'jungle' of historical Chinese thought.[33] This peril can be avoided by methodologically focusing on not the complicated thought but on the specific outcomes of the thought.[34]

Pye's widely recognised research highlights two typical outcomes of the thousand year absolutist and hierarchical politics. One of these was the crisis of authority that highlighted the extraordinary long history of the sense of "Middle Kingdom", as well as a family tie and patriarchal society that provided the Chinese people with recognition of the authority-subordination relationship. However, a continuous and severe crisis of that relationship happened in the late Qing dynasty as well as in the republican period.[35] As a result, Chinese people were forced to seek a new authority. According to Pye, this process finally led to the acceptance of the single party rule that happened even before 1949.[36]

Another key concept is factionalism.[37] Political faction is quite common in Western politics. However, possibly because of China's extremely long history of absolutist

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[31] See James R. Townsend, *Political Participation in Communist China,* (Berkeley: University of California Press, 1967). P. 10. National extinction largely refers to the lost of national identity, such as domestic culture.

[32] See the discussions in Franklin W. Houn, *Chinese Political Traditions,* (Public Affairs Press: Washington, [1965.: 1965).

[33] For example, any attempt at revealing how Confucianism influenced the Chinese social development faces a methodological pitfall: as Confucianism has been a pervasive and underlying consciousness, scholars trying to do so either cannot clearly identify the specific Confucian ideas, or may be embarrassed for realising everything can have their origin in Confucianism.

[34] For example, see Benjamin I. Schwartz, "Hierarchy, Status, and Authority," in *China and Other Matters*, ed. Benjamin I. Schwartz, (Cambridge, Mass.: Harvard University Press, 1996). esp. p. 127.

[35] Lucian W. Pye, *The Spirit of Chinese Politics; a Psychocultural Study of the Authority Crisis in Political Development,* (Cambridge, Mass.,: M.I.T. Press, 1968). pp.5-7; see also Lucian W. Pye, "Political Science and the Crisis of Authoritarianism " *The American Political Science Review,* 84, no. 1 (1990): 3-19.

[36] Pye, *The Spirit of Chinese Politics*. pp. 8-9.

[37] See generally, Pye, *The Dynamics of Chinese Politics*.

politics and the people's revulsion at social and political unrest, Chinese political philosophy refuses to legitimise it. However, covert factional struggles can be traced in every period of China. As demonstrated in the review chapter, many researchers, particularly those taking a 'power struggle' model, set factional struggle as their logical starting point.

Besides Pye, China's traditional legal concept is another clue of linking conventional Chinese intellectual sources and its modern influence. Cai stresses that a characteristic of conventional legal thought was that the legal system was subject to the control of administrative system, which resulted in a negative influence over achieving modern legal independence. [38] This idea was echoed by Leng, who noted that the 'conventional legal thought' was against the rule of law concept. [39]

2. The post-1840 heritage (1): nationalism

Historically, the late Qing dynasty refers to the period from 1840 to the end of the Qing dynasty in 1911; it was followed by the extremely chaotic warlord period and the republican regime till 1949.[40] The Opium War not only resulted in the crush of the absolute imperial ruling, but also triggered profound intellectual and institutional changes. According to Fairbank, it was not the first time that Chinese people had to face foreign invaders that might be a peril to the existing society and political system. However, the dramatic change during this period was that "*the ideological discontinuity created by Western contact eventually undermined and destroyed China's traditional political order, in its foreign as well as its domestic aspects*".[41]

The most drastic and continuous change of this period was the rise of nationalism, which was largely the result of the Western invasion that threatened China's long established self-recognition as a 'middle kingdom'. One of its remarkable intellectual outcomes was xenophobia. Although having a complicated essence, the concept normally referred to an idea of seeing Western world, particularly their technology and

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[38] Cai, *History and Change*. P.278.
[39] Shao-Chuan Leng, "The Role of Law in the People's Republic of China as Reflecting Mao Tse-Tung's Influence " *The Journal of Criminal Law and Criminology* 68, no. 3 (1977): 356-73; see also Franz Michael, "The Role of Law in Traditional, Nationalist and Communist China " *The China Quarterly*, no. 9 (1962): 124-48.
[40] See generally, John King Fairbank, *The Cambridge History of China. Vol. 10, Part 1 (Late Ch'ing, 1800-1911),* (Cambridge: Cambridge University Press, 2008). Chapter 1.
[41] John King Fairbank, "Synarchy under the Treaties," in *Chinese Thought and Institutions*, ed. John King Fairbank, (Chicago: University of Chicago Press, 1957). pp. 204-06.

society, as superior to China. Xenophobia normally led to an attempt by its advocates to prevent China's own culture from being threatened by the superior Western civilisation; historically, people did so by borrowing or learning certain things (technology at the beginning, and western political system in the latter period) from the West.[42] Also stressing the preservation of its own culture was the concept of culturalism that was different from xenophobia, as it stressed the superiority of Chinese culture.[43]

Xenophobia and culturalism can be seen as 'right-wing' nationalism for their primary concern was to preserve the Chinese essence from being eliminated by the Western invasion. However, during this period, nationalism had another expression. Such an expression claimed that the Chinese tradition was responsible for China's humiliation since the Opium War in 1840. People having this idea normally had a radical attempt to totally westernise the Chinese society by borrowing Western political system and many of their social values. Referred to as 'left-wing nationalism', this type of nationalism became popular during the republican period of China, particularly during and after the May Fourth Movement.[44]

Pragmatism, a crucial essence of all forms of nationalism, is particularly worth highlighting. According to Li's salient conclusion regarding the May Fourth movement and Chinese nationalism, the reformers' primary task during that period was to save the nation from extinction (jiuwang); enlightenment was a matter of secondary importance. Li claims that nationalism in China had a highly instrumental appearance; thereby it

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[42] James Townsend, "Chinese Nationalism," in *Chinese Nationalism*, ed. Jonathan Unger and Geremie Barmé, (N.Y.: M.E. Sharpe, 1996). P.4; Prasenjit Duara, "De-Constructing the Chinese Nation," in *Chinese Nationalism*, ed. Jonathan Unger and Geremie Barmé, (N.Y.: M.E. Sharpe, 1996). p. 42; John Fitzgerald, "The Nationless State: The Search for a Nation in Modern Chinese Nationalism," in *Chinese Nationalism*, ed. Jonathan Unger and Geremie Barmé, (Armonk, N.Y.: M.E. Sharpe, 1996). Normally, the Westerners were seen as not only the bringer of the modern technologies, but also, more importantly, the destroyer of the tradition and privileged class. James Claude Thomson, *While China Faced West ; American Reformers in Nationalist China, 1928-1937,* (Cambridge Mass.: Harvard University Press, 1969). p. 4.
[43] Townsend, "Chinese Nationalism." P.4; Joseph Richmond Levenson, *Liang Ch'i-Ch'ao and the Mind of Modern China,* (Cambridge: Harvard University Press, 1959). Chapter 1 and 2; Benjamin Isadore Schwartz, *In Search of Wealth and Power: Yen Fu and the West,* (Cambridge: Harvard Univ. Press, 1964), last chapter.
[44] The direct motivation of the rise of this nationalism was the continuous failure of China's anti-invasion struggle that questioned the effect of importing the Western techniques without importing their values (e.g., political system). The most typical and crux incident was the May Fourth Movement. This movement was ignited by a student demonstration protesting against the Chinese gocernment's humiliating policy toward Japan. According to Chow, the students and new intellectual leaders advocated intellectual and social reforms. They stressed primarily Western ideas of science and democracy. Traditional Chinese ethics, customs, literature, history, philosophy, religion, and social and political institutions were fiercely attacked. Cites in Tse-Tsung Chow, *The May Fourth Movement*, (Stanford: Stanford University Press, 1960). p. 1.

lacked an adequate 'essence' to support.[45] In another widely acknowledged writing, Schwarcz's similar idea stresses that 'democracy' and 'science', as two major claims of the May Fourth movement, were not equally weighted: every time when the peril of national extinction became urgent, the claim of democracy diminished.[46] Pye notes that the nationalists kept criticising conventional Chinese culture and limiting the spreading of certain external ideas, making Chinese nationalism of no substantive core. Therefore, any idea that could save China from national extinction was welcomed and appreciated.[47]

There was a coincidence during this period with countries that were being considered by China as models to learn from were at the same time the fiercest invaders (Japan, Germany, Britain, and America). Their invasion resulted in a universal concept that Westerners had been always trying to conquer and colonising China,[48] which left people, particularly the elite, with a profound distrust of Western political systems.[49] At the same time, the institutional flaws of the Western legislative system, especially the legislatures' lack of administrative efficiency (which was widely observable and deteriorating in the twentieth century)[50] and the House-President conflict were thought to be a threat to further worsen the national humiliation.

3. The post-1840 heritage (2): failures of borrowing Western institutions

It is worth stressing that, to some extent, saving the nation from extinction does not automatically conflict with an increase to democracy; it is particularly so for the Chinese intellectual elite whose educational background had been Westernised in the republican period. For them, seeking national salvation automatically means discovering the secret of the Western regimes being strong and rich (Fuqiang). Unlike Yan Fu and other earlier-generation intellectual elite who finally went back to

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[45] Zehou Li, "Qimeng Yu Jiuwang De Shuangchong Bianzou (the Duo Variation Of "Enlightenment" And "Saving the Naiton from Extinction") " *Zouxiang Weilai* no. 1 (1986).

[46] Vera Schwarcz, *The Chinese Enlightenment: Intellectuals and the Legacy of the May Fourth Movement of 1919,* (Berkeley: University of California Press, 1986). Chapter 5.

[47] Lucian W. Pye, "How China's Nationalism Was Shanghaied " *The Australian Journal of Chinese Affairs*, no. 29 (1993): 107-33.

[48] M. N. Roy, *Revolution and Counter-Revolution in China,* (Calcutta: Renaissance Publishers, 1946). P. 583. Joseph Richmond Levenson, *Confucian China and Its Modern Fate; a Trilogy,* (Berkeley: University of California Press, 1968). pp. 147-49. Julia Lovell, *The Opium War: Drugs, Dreams and the Making of China,* (London: Picador, 2012).

[49] An salient expression can be seen in Mao's widely cited *On People's Democratic Dictatorship*.

[50] Bryce, *Modern Democracies*. Chapter 58.

culturalism, the elixir they identified was representative democracy, although anarchism and early socialism were also influential.[51]

Therefore, a (to some extent) consensus of learning from Western political systems can be observed from the elite during that period. Correspondingly, the 1911-1949 period of China witnessed many attempts at imitating Western political systems in the process of designing China's own. However, the outcome cannot be said to have been successful. For example, according to Nathan, the twelve year period after the death of Yuan Shih-k'ai (in 1916) that declared the fall of the Beiyang military regime saw ten heads of state, forty-five cabinets, five legislatures, and seven constitutions or basic laws.[52]

Pioneering researchers have noted that those unsuccessful attempts at introducing certain Western political institutional designs damaged the reputation of those designs. Because many of those unsuccessful attempts were related to the legislative institutional design, the reputation of Western legislative system got a particularly severe damage.[53] This research identifies three types of the unsuccessful attempts.

The first type was that a regime established a nominal legislature, which was used as a fire wall to prevent the demands for political reforms from threatening the regime. The Qing dynasty's so called Provisional Constitution-Making was a salient example.[54] The second type, the legislatures were criticised for resulting in the rise of separatism (also known as regionalism). The abovementioned Provisional Constitutional Making movement of the late Qing dynasty was its first appearance. The first step of this movement was to establish provincial level legislatures but not the national legislature. In doing so, local elite and country gentries were endowed with too much power, and

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[51] James E. Sheridan, *China in Disintegration : The Republican Era in Chinese History, 1912-1949,* (New York: Free Press, 1975). p. 112.
[52] Andrew J. Nathan, *Peking Politics, 1918-1923 : Factionalism and the Failure of Constitutionalism,* (Berkeley: University of California Press, 1976). The detailed list is available at Hsi-sheng Chi, *Warlord Politics in China, 1916-1928,* (Stanford, Calif.: Stanford University Press, 1976). Appendix A.
[53] O'Brien believes that the continuous failure in importing Western parliamentary system and the invulnerable Constitution was a considerable intellectual source of the suspicious attitude to the Western parliamentary system and even the possibility of practicing constitutional democracy. O'Brien, *Reform without Liberalization*. pp. 17-20.
[54] Facing the threat of the regime being overthrown, the Qing dynasty launched that movement having two focuses, namely, the constitution-making and the establishment of a parliamentary-type legislature. The designing of that legislature borrowed many ideas from the Meiji style Japanese institutional design having a prerogative Kingship with the support of a legislature having limited power. However, as the new constitution attributed too much power to the royal family, it clearly showed that that movement was merely an instrument on which to hang the accumulating discontent.

the central authority waned swiftly.[55] Perhaps a more remarkable example was the history of the warlord period, during which endless wars between the warlords further weakened the country. This period saw not only the extremely weak and unstable central legislatures[56] but also the legislators and the parties whose power was not given by and used for the masses.[57] Their weakness that encouraged warlord regional separatism further damaged the reputation of Western legislative systems.

The weakness of the legislatures was largely responsible for the third legislative crisis: the period between 1911 and 1949 saw two dictators and two oligarchy cliques behind the dictators –Yuan's Beiyang period and Jiang's KMT period. During Yuan's period, the weak national assembly that can be identified as Mezey's definition of a 'minimal legislature'[58] was in a completely subordinate position.[59] This period also witnessed the rise of Jiang's power and the KMT single party regime. During that period, Jiang's autocratic rule was camouflaged by the so called 'tutelage stage',[60] which meant a legislature whose function was minimal.[61] The masses learned from the two oligarchic regimes that legislature could not check the power of a dictator who controlled the military forces (both people were the head of the national armed forces).[62] At the same time, both periods also exemplified the negative effects of the multi-party system. It was observed that in the period of Yuan, many parties were created within the legislature. The conflicts among these parties further weakened the legislature and strengthened the ambition of military dictators. Furthermore, the Provisional Constitution of the Republic of China (Republic China's first constitutional law promulgated immediately after the fall of the Qing dynasty) resulted in the conflict between the President and the Parliament, which was caused by its attempt at preventing the autonomous power of the

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[55] Sheridan, *China in Disintegration: The Republican Era in Chinese History, 1912-1949*. pp. 34-35.
[56] Ibid. p. 103. Chi, *Warlord Politics in China, 1916-1928*. p.3.
[57] Jiannong Li et al., *The Political History of China, 1840-1928*, (Stanford, Calif.: Stanford University Press, 1967). pp. 278-79.
[58] Mezey, *Comparative Legislatures*. Chapter 2.
[59] See generally, Li et al., *The Political History of China, 1840-1928*. Chapter. 11.
[60] According to the plan of Sun, the founding father of the Republic China, Three steps are needed to establish Constitutional politics. (1) Military politics, during which the military ruling helps ending the national turmoil and defending against foreign invaders. (2) Tutelage politics, during which an autocratic civil regime rules the people having no experience on political participation and trains them with basic political skills that would be a foundation of the (3) democratic constitutional politics. Sun Yat-sen (1924), *Fundamentals of National Reconstruction for the Nationalist Government (Guomin zhengfu jianguo dagang)*. A detailed introduction for the 'tutelage' stage is in Tuan-shêng Ch`ien, *The Government and Politics of China*, (Cambridge: Harvard University Press, 1950).pp. 133-34.
[61] See the institutional designs of the 1936 Draft Constitution of the Republic of China.
[62] Lucian W. Pye, *Warlord Politics; Conflict and Coalition in the Modernization of Republican China*, (New York,: Praeger, 1971). pp. 15-17.

president by a legislature. However, severe conflicts between the two powers further weakened the central power and finally 'overtured' the separation of the warlords. In the same vein, the period of Jiang saw the KMT's overwhelming power and control among the national legislature and such a position facilitated Jiang's dictatorship.

4. The impact of history on the vanguard consciousness

An important impact of this type was the effect of the abovementioned bitter history of importing the Western political systems since 1840 in strengthening the Marxist claim of the vanguard-lead social and political development. Before the introduction of the Communist ideas from the outside world, such a history had resulted in a consensus among the social and political elite that Chinese people, particularly the people in rural areas were so unenlightened that the Western political system was an expensive 'white elephant'.[63] Following his unsuccessful attempt at creating a constitutional monarchical system in the Qing dynasty, Kang complained that the masses had not been enlightened enough. Therefore, the introduction of Western political systems was problematic.[64] Sun Yat-sen designed the abovementioned three-stage roadmap to constitutionalism. Its second 'tutelage' stage was designed to train the masses how to carry out their political rights. It bears no risk to conclude that China's own intellectual background was well-prepared to welcome the introduction of the Communist vanguard enlightenment doctrine.

However, it is worth highlighting that this period witnessed the first and, till now, the largest scale importation of Western liberal democratic ideas. [65] Although the unsuccessful attempts at practising those ideas were responsible for the rise of the vanguard consciousness, that importation had a very crucial consequence of establishing a belief among Chinese people that democracy should be a replacement for autocracy. All of the subsequent regimes, no matter how they define democracy, could not avoid, at least formally, in showing respect to democracy.

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[63] See Vera Schwarcz, *The Chinese Enlightenment : Intellectuals and the Legacy of the May Fourth Movement of 1919,* (Berkeley: University of California Press, 1986). Chapter. 3.

[64] Qichao Liang, "Monarchy Is the Only Strategy to Save China (1899)," in *Liang Qichao - Select Writings*, ed. Shuliang Chen, (Beijing Yanshan Publisher, 1997).

[65] For the literature advocating the liberal democratic politics in the republic period of China, see Weishi Yuan (ed.), *Farewell to the Middle Ages: Selection and Interpretation of the Literatures of May Fourth Movement,* (Guangzhou: Guangdong People's Press, 2004). Collect 4; typical literatures include Li Jiannong, *Constitution Supremacy: Free Press and Free Speech*; Chen Duxiu, *Freedom on Law and Speech*; Gao Yihan, *On Mill's "On Liberty"*.

5. The 'rule by law' concept

Having a massive impact on the post-1949 institutional development, the 'rule by law' concept should be highlighted. That concept can be seen as a distorted expression of the 'rule of law' concept, which was caused by the combination of the effect of the Marxist legal concept (as a part of the class struggle doctrine) and China's long history of seeing law as a tool of social administration.

Some pioneering researchers have mentioned that the use of 'law' or 'legal system' in China has a huge different contextual meaning from its default understanding. Peerenboom, in discussing the rule of law in China, mentioned that

> *"Even allowing that reformers have looked to foreign legal systems for guidance, the conception and implementation of rule of law in China as reflected in current institutions, rules, and practices are significantly different from any existing legal system in the West."*[66]

McCormick also mentioned the existence of two dichotomised legal concepts in the post-Mao China. The author uses 'the law from above' to refer to seeing "law as a means of restoring order in a fundamental sense", while stressing that *"other people in China also favoured a strong legal system, but emphasised making law accessible to society as a means of restraining the abuse of power instead of imposing power."*[67] In the research of Deng's guiding principle for reform, Zheng believes that *"(in the period of Deng) the rule by law has become a major goal of Chinese political development."* the author further notices that Deng has no interest in the Hayekian principle of legally constraining the political power; its cultural origin is that the rule of law is so remote from both the Chinese tradition and Marxist ideas.[68]

Domestic legal scholars prefer to use Constitutionalism and the checking of political power as two criteria in identifying the two concepts. According to Cai, the 'rule of law' concept and the Constitutionalism is inseparable: the rule of law can be fulfilled and not deteriorates into a 'rule of dictator' or 'rule of authority' only if it is under the guidance

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[66] Cites in Randall. P. Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (Oxford; New York: Oxford University Press, 2007). P. 196.
[67] Barrett L. McCormick, *Political Reform in Post-Mao China: Democracy and Bureaucracy in a Leninist State,* (Berkeley: University of California Press, 1990). p. 103.
[68] Yongnian Zheng, *Will China Become Democratic? Elite, Class and Regime Transition,* (New York: Eastern Universities Press, 2004). Chapter 2.

and support from Constitutionalism; a well-designed and functioning Constitution is the prerequisite of the rule of law. Without that, the author states, *"it is de facto the rule by law that was the main feature of the thousand year history of absolutist ruling"*.[69]

This research claims that the diversity between the two concepts can be contextualised into Unger's theory of law in society. The 'rule by law' concept can be understood as Unger's identification of 'bureaucratic or regulatory law', under which laws are positive regulations of the government, and not the spontaneous production of society. In contrast, the meaning of the 'rule of law' can be simulated to Unger's category of 'legal order or legal system', which is autonomous, public, and positive.[70] More importantly, the pluralist society and the sense of higher law (which was based on the natural law tradition) are its two poles.[71] Baum's research on the Chinese legal system echoes this contextualisation. According to him, the 'rule by law' concept means law as an instrument of centralised state control; the 'rule of law' means law as a shield against the arbitrary actions of the states, the difference between them *"comprises the essence of the distinction between bureaucratic and pluralistic law"*.[72]

The origin of the 'rule by law' concept can be seen clearly from two perspectives; on the one hand was the Communist intellectual ideas. Scholars noticed that the history of the CPC before 1949 was filled with lawless tradition.[73] In addition to a direct disdaining of law, the CPC leaders, primarily after 1949, stressed the instrumentalist legal concepts. The most preeminent and profound consequence was seeing law as an instrument of the proletarian class.[74] Directly led by the class struggle doctrine was the concept that laws were the ruling class' instrument of imposing class dictatorship,

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[69] Translated, Dingjian Cai, "Fazhi Yu Xianzheng (Rule of Law and Constitutionalism) " *Journal of Beijing College of Politics and Law,* 4, no. 32 (2002): 1-3.
[70] Roberto Mangabeira Unger, *Law in Modern Society: Toward a Criticism of Social Theory,* (New York: Free Press, 1976). pp. 51-53.
[71] Ibid. pp. 83-84.
[72] R. Baum, "Modernization and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality " *Studies In Comparative Communism Studies In Comparative Communism,* 19, no. 2 (1986): 69-103. Baum's contextualization did not follow Unger's typology well for the "pluralistic law" is not one of the Unger's three types of law, but the feature of the third type.
[73] Leng notices that during Jiangxi and Yanan period, the CPC tried to make its own laws, but the pressure of surviving and struggling against the KMT made the law-making work always in the secondary position. See Leng, "The Role of Law in the People's Republic of China as Reflecting Mao Tse-Tung's Influence". See also, *Derek J. Waller, The Kiangsi Soviet Republic: Mao and the National Congresses of 1931 and 1934,* (Berkeley: Center for Chinese Studies, University of California, 1973). Mao's early work *Peasant Movement Report* appreciated the lawless conflict between peasants and landowners and concluded that the lawless condition is "very good (haodehen)".see Zedong Mao, *Peasant Movement Report.*
[74] Shao-Chuan Leng, "The Role of Law in the People's Republic of China as Reflecting Mao Tse-Tung's Influence " *The Journal of Criminal Law and Criminology,* 68, no. 3 (1977): 356-73.

which denied the 'natural law' concept and divided laws into "bourgeois law" and "proletarian law". Seeing the legal system in the republican period as the remnant of bourgeois law, the CPC after 1949 launched a wholesale movement to throw it into the trash bin. Meanwhile, in imitating the Soviet legal system, it established the so called 'proletarian legal system'.[75] It is also worth highlighting China's thousand year history of autocratic and absolute dictatorship. Within that period laws were always equated to administrative regulations, which further strengthened the 'rule by law' concept.

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[75] A detailed discussion is in Michael, "The Role of Law in Traditional, Nationalist and Communist China "

Chapter 5. Chinese legislatures before 1978

Introduction

This chapter focuses on the NPC institutional changes before 1978. A brief introduction and a flow chart are provided in the first section illustrating all of the legislative institutional designs before 1949. Taking the intellectual perspective, the legislative developments during the period of 1949-1978 are more specifically studied. That period of development is particularly highlighted due to its greater importance than prior to 1949 in shaping the basic institutions of the 1980s NPC. The findings of the study of this period suggest an important intellectual change behind the institutional changes contextualised by two types of Marxist ideas.

I. Legislatures before 1949

As partially mentioned in Chapter Four, the earliest attempt at making a legislature started in the Qing dynasty. Faced with many challenges, the dynasty tried to turn its prerogative ruling into a formalist constitutional monarchy. At the end of the Qing dynasty and the establishment of the Republic state, many attempts were made in order to establish a Westernised political system. However, most, if not all, of those attempts only resulted in very weak, passive, corrupt, and short-lived legislatures.

Since its establishment in 1921, the CPC and its anti-establishment as well as the local regime also made several attempts at creating their own legislatures. Interestingly, all of its three influential local regimes had a legislature. From which many key features of the NPC institutional design can be observed, including rejecting the power separation principle and seeing the legislature as the supreme organ of the sovereignty.[1]

The CPC's success in the civil war in 1949 could be partially seen as the success of the Soviet style political system as it resulted in a system having greater efficiency, power, and reflection. Since 1949, the Soviet political systems, as well as the Marxist intellectual ideas, were given official status. The following figure shows those attempts in the timing sequence.

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[1] For detailed introduction, see O'Brien 20-25. For a specific introduction to all six attempts at building a legislature before the NPC, see Ruiliang Yuan, *The History of the Shaping of the People's Congress System (Renmindaibiaodahui zhidu xingcheng fazhan shi),* (Beijing: People's Press, 1994). Chapter 2-3.

Figure 7: *A timeline showing attempts at establishing a legislature in China (1911-1949)*
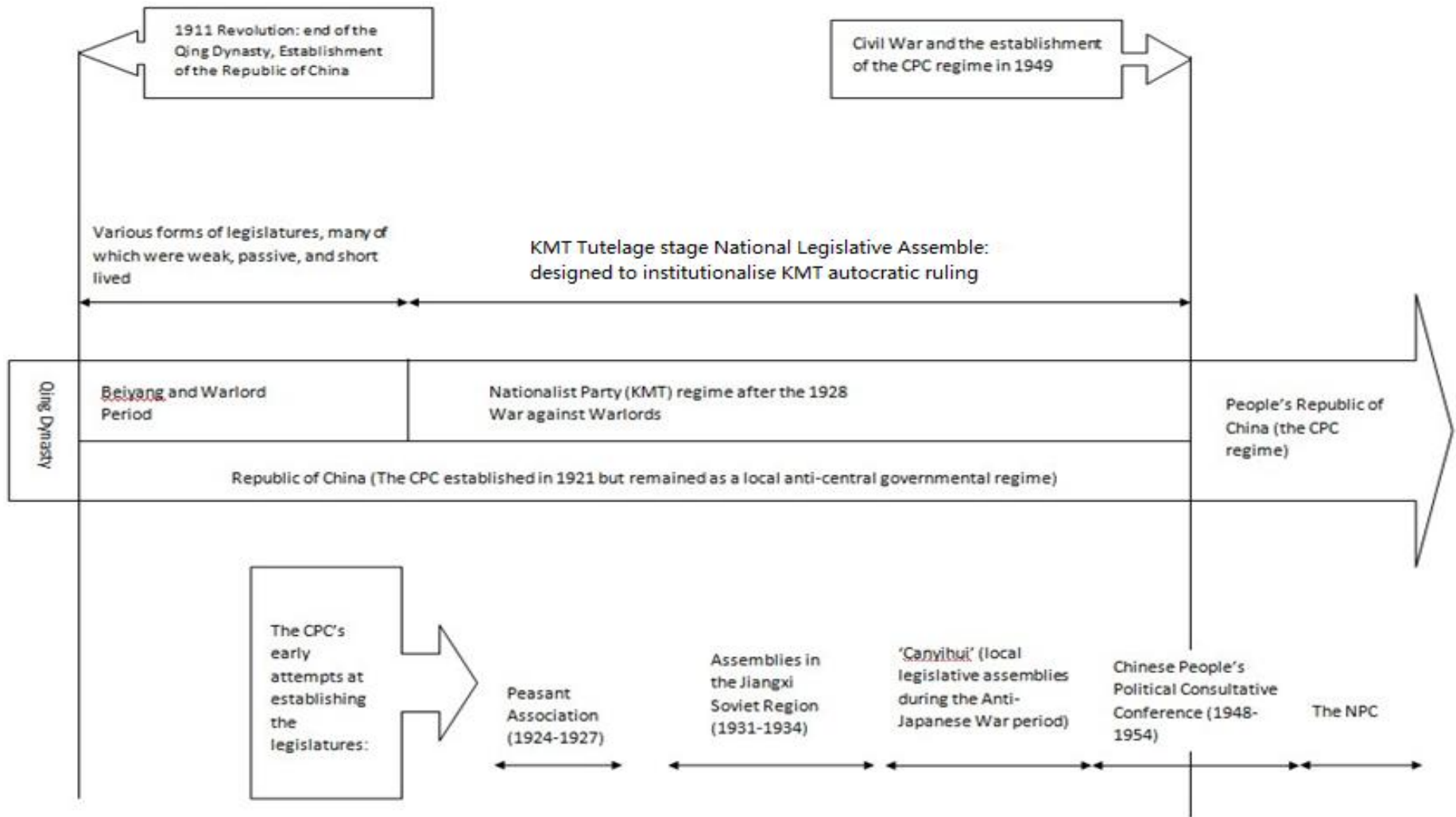
Interpretion: The large arrow shows the timing sequence of the Chinese political history. Sessions above and below the arrow show the attempts at establishing a legislature; all of the attempts made by the CPC are shown below the arrow.

Figure by author

II. National legislature 1948-1954

Although the CPC declared the founding of the new regime in 1949, it is worth mentioning that the CPC's ruling at this stage, particularly in the few years after 1949, was far less firm than in the latter period because several competing and influential political forces existed. The CPC's propaganda before 1949 made the situation more complicated: As an anti-establishment party in the period of KMT regime, democracy was one of its most crucial slogans. Such a strategy was more effective and persuasive in comparison to that of the autocratic KMT. It helped the CPC to earn enough support particularly from other political parties believing in the principles of Western liberal democratic politics. However, such a strategy meant that the CPC's new regime, at least during its first several years, must give other political forces some power, and consultations between the CPC and other political forces were inevitable. Correspondingly, the CPC created its state legislature named the Chinese People's Political Consultative Conference (CPPCC) in 1948. As its name illustrate, it was designed to offer an institutional channel for consultations between the CPC and other political forces.

1. Intellectual compromise

For the reasons above, the CPC had to postpone its ambition to design a new political system according to Communist ideologies and to compromise with other influential political participants. Correspondingly, the CPC's official rhetoric advocated the 'two stages of the road to socialism': the Chinese society as a mixture of Feudalism and Colonialism should firstly develop 'new democracy' stage and then into the socialist stage.

Intellectual compromises began to emerge at this stage: (1) the class struggle concept was less stressed while highlighting the 'united front'. (2) Although the CPC emphasised that the proletariats should be the leading class, and the enlightened proletariats should lead other classes, it acknowledged that other classes had enlightenment or were enlightened. (3) The class-based democratic dictatorship idea was not stressed.[1]

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[1] Mao, *On Coalition Government (1945)*. See also Zhou's speech on Constitutionalism and consolidate on 1944, and Mao's well known talk in 1945 with democrat Huang Peiyan that

However, the compromise had a bottom line for the CPC to guard its basic intellectual tenets in order to keep its political identities that was crucial for the newly created communist regime. Such identities consisted of at least three aspects: (1) class-based democracy: although other players could be given power in the political arena, the power was given only if they belonged to the proletariat but not any inimical class. (2) The people were claimed to enjoying a democracy of a higher quality than 'bourgeois democracy'; similarly, 'bourgeois legislative tricks', such as the checks and balances principles, were rejected. (3) Communism's success in China is a 'historical necessity'. The leadership of the CPC was therefore legitimised by claiming this 'historical necessity'; although other participants were not entirely eliminated.

2. Functional demand and institutional outcome

The most typical characteristic of the national legislature during this period were many institutional settings echoing the CPC's demand for the legislature's legitimising function that could provide the CPC with adequate legitimacy support.

It is observable that the CPPCC was not only designed to perform the 'legitimising policy' function, but also committed strongly to the 'legitimising the regime' function. To be a remarkable institutional indicator of the CPC's demand for the legislature to fulfil the 'legitimising the regime' function, the CPPCC was given many 'united front' related institutional settings. Specifically, the proportion of non-CPC deputies in this stage was the highest till now;[2] the number of non-CPC officeholders of central government ministries, whose appointment should be assented by the CPPCC, was also the highest.[3] Although a specific list was not available, this period saw many articles and speeches made by the CPC power holders emphasising the importance of the united front, which could be contextualised to emphasise a pluralistic politics.

The CPPCC's strong legitimising function provided the CPC with a substantial amount of legitimacy. Consequently, the CPC can make less compromise in the institutional designs related to other legislative functions. A 'seemingly strong' law-making function was one of its specific outcomes. The CPPCC was given a preclusive law-making power, by which it promulgated the Communist China's first Constitution and all other

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"*democracy will help CPC to avoid China's thousand years prosperity-decline-cycle*".
[2] Reseach Section of the NPCSC General Office, *Refined Interpretation on Chinese Constitution (Zhongguo xianfa jingshi),* (Beijing: Democracy and Legal Press, 1996). p. 9.
[3] Ibid. p.9.

fundamental laws. However, this power was largely superficial: The CPC's vanguard roles and its resulting belief considering the CPPCC's law-making function as merely a mechanism that transforms party decisions into policies or laws made the CPPCC law-making function very weak. Taking the process of Constitution making in 1953 as an example; pioneering research shows that the CPC clearly dominated the whole process. The draft Constitution, before submitting to the CPPCC, was made inside the party committee;[4] other political forces were invited to participate in its reviewing stage in the CPPCC. However, almost all of their suggested amendments were the literal changes having no relation to the fundamental topics, which included the limitation of political power, protection of individual rights, and the designs of political institutions.[5] The draft Constitution finally passed with no veto.[6] In the same vein were the representative and supervisory functions, both of which were not demanded by the CPC and the corresponding institutional designs were not created: deputies were not elected but rather determined by consultations between the CPC and other political parties. This was a clear institutional expression that the representative function was sacrificed in order to increase the legitimising function. Supervisory function related institutional designs were also not observed from the CPPCC related organisational and procedural laws,[7] which means that the legislative institutional design of this period had almost no concern with this area.

III. NPC's debut and developments: 1954-1956

Each CPPCC lasts five years; in 1954 the first CPPCC ended and resulted in a debate on whether the second CPPCC should be proceeded with. Following Mao and other CPC leaders' rejection of the second CPPCC, the promulgation of the first Constitution, and the calling of the indirect deputy elections, the first NPC was held in the same year. The NPC institutional settings underwent several changes compared to the first CPPCC, and the later one was transformed into a merely united front organisation with little power to

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[4] Dayuan Han, *The 1954 Constitution and New China's Constitutionalism (1954 Xianfa yu Xinzhongguo Xianzheng),* (Changsha: Hunan People's Press, 2004). pp. 116-17.

[5] Minutes of the joint conference of the Convenor of Constitution Drafting Groups, in Ibid. pp. 130-76, particularly pp. 151-58.

[6] See Franklin W. Houn, "Communist China's New Constitution " *The Western Political Quarterly,* 8, no. 2 (1955): 199-233.

[7] Including the Common Programme (Gongtonggangling) that was promulgated in 1949 as China's interim Constitution, as well as Organisational Law of the CPPCC (Zhongguo Renmin Zhengzhi Xieshang Huiyi Zushifa).

influence politics.[8] Regarding this institutional transition, scholars outside China prefer to see it as the CPC's attempt to realise its preclusive control of the political power behind the camouflage of the united front.[9] In China, the official rhetoric and many scholars agreed that the change happened because the non-elected and transitional CPPCC had finished its task and the elected NPC was created to institutionally practice the Marxist tenets. The CPC claimed that only by these the advocated socialist democracy could be fulfilled. Taking the intellectual perspective, this section focuses on two issues: why the institutional transition happened and for what reason did the newly created NPC achieve a swift functional and institutional development in the first three years.

1. The consolidation of the CPC's political power

Many remarkable successes had been achieved over the five years after 1949, including military success,[10] great economic revival success (see table 3), a nationwide land reform movement that offered peasants their own land, and a series of social movements restoring social order. For the CPC who led the changes, the achievements became a strong legitimacy provider that significantly fortified the CPC's ruling. The legitimacy the CPC obtained can be seen as a source of 'negative legitimacy' that refers to the present regime emphasising the failures of the previous regime in order to earn legitimacy.[11]

Also in this period, a series of social movements reshaped the diversified and civilised society by making it 'homogenised' and 'politicised', and thereby removed the social basis of the abovementioned political forces (particularly the non-CPC political

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[8] After 1954, the CPPCC became a consultative and 'policy advising' organisation. Its member is not elected but selected by the CPC's department of organisation (a department in charge of making personnel decisions). Although expertise is one of the criteria of selection, the primary concern is to give those non-CPC political forces limited, largely superficial, political power. The CPPCC after 1954 is a rather weak institution that has no compelling power (can only offer suggestions). Its function is so weak that a conclusion can be easily reached that it was kept after 1954 for the primary reason of not policy advising but easing other political forces. That conclusion can also find evidence from the CPPCC's increasing importance after 1980 – in order to increase its 'superficial' importance, the CPPCC and the NPC were held almost simultaneously with the almost similar session and the similar conference hall, which resulted in a fact that even many ordinary citizens today cannot distinguish the sharp institutional and functional diversities between the two organisation.
[9] O'Brien, *Reform without Liberalization*. p. 24.
[10] It refers to the Korean War. It is still under debate as to whether it was a just war and whether China won it, but at least the propaganda made people believed so.
[11] Samuel P. Huntington, *The Third Wave : Democratization in the Late Twentieth Century,* (Norman: University of Oklahoma Press, 1991). pp. 49-50.

parties).[12] The transformation of thought in the meantime also largely eliminated the non-communist thought and further consolidated the rule of the CPC.

Table 3: *Economic situation: 1949 and 1954*

	GDP (Billion)	Industrial Output (Billion)	Food Production（million ton）	Population (Million)
1949	17.956	1.40	113.18	541.67
1954	85.9	5.15	169.52	602.66
Growth	378%	268%	50%	11%

Note: several key 1949 indices are not available, including citizen income and Revenue.

Source: National Bureau of Statistics, *Compilation of the Statistics of Fifty Years New China*, (Beijing, Chinese Statistic Press, 1999)

This research argues that the NPC's many institutional designs that sharply diversified from the CPPCC were made possible by the CPC's preclusive control of political power and the ensuing society-wide acceptance of the Marxist intellectual ideas. By which, since 1954, the CPC as a preclusive influencer, or can be seen as a 'designer', determined the Chinese legislative institutional developments. Because the CPC had no further demand to compromise with other influencers, it started to reshape the institutions according to its functional demands derived from the two basic Marxist tenets.[13]

2. Functional demands and institutional designs

Although specific data are not available, the remarkable quantitative increase of new laws (see figure 8) immediately illustrated the improvement of the decision-making function.[14] However, the corresponding institutional designs seem not able to explain that increase. There were some positive institutional changes, including giving the

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[12] Those political parties or groups established before 1949, and were therefore under the influence of Western political systems. It is the reason that they were created to represent the interest of a specific part of people or a policy preference; however, that foundation was removed after 1949 when the whole society was highly simplified and homogenised.

[13] A recent research of the first NPC deputy election in 1954 cites several pieces of primary evidence, which perfectly illustrate the CPC's unquestionable legitimacy of both its leadership and its intellectual background. As an example, see Lao She's recollection of the deputy election, in RMRB 24-08-1954, cited in Zhaoyong Mu, *Recordings of the First Npc (Diyijie Quanguorenmindaibiaodahui Shilu),* (Guangzhou: Guangdong People's Press, 2006).

[14] See also, Stanley B. Lubman, "New Developments in Law in the People's Republic of China " *Northwest Journal of International Law & Business*, no. 1 (1979): 122-33

Standing Committee a limited law-making power as a remedy to the short Plenary Session period. However, evidence shows that institutional designs that would weaken the NPC decision-making functions were also established in this period. The most remarkable one was the mechanism of advance-assent in the CPC Central Committee and the establishment of the Political-Legal Group in the legislative process, both of which made the CPC a higher decision maker than the NPC. Moreover, The NPC lacked sufficient number of staff members, which was also responsible for its lack of power in initiating law bills.[15]

Figure 8: *Number of Legislative acts adopted by the Central Government, NPC, or NPCSC*
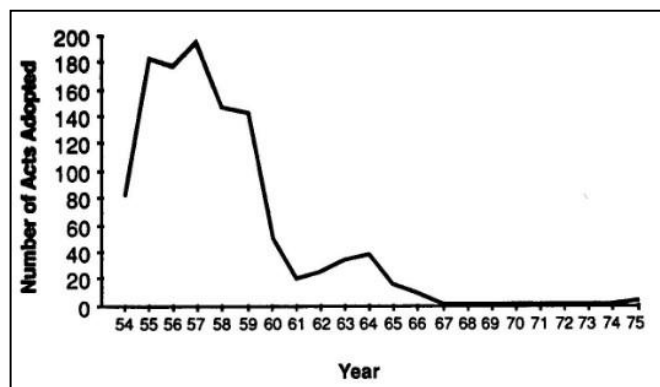
Source: O'Brien, *Reform without Liberalization.* p. 53.

For at least three reasons, the CPC leaders during this period focused on strengthening the representative function: (1) the official reason of ending the CPPCC was its lack of representation (deputies were not elected), thus the NPC as an replacement must have a strong function in this area; (2) Stalin's urge for a legislature that could represent its people;[16] (3) the CPC's promise for a higher democracy that needed to be institutionally practised by creating a legislature having strong representative function. However, primary evidence shows that the party's emphases resulted in a weak NPC representative function: firstly, remonstrative deputies were quite rarely seen. [17] According to the compilation of the 1955 NPC plenary session deputy addresses, the most commonly seen deputy speeches focused on their specific plan of how to respond

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[15] O'Brien, *Reform without Liberalization.* p. 76.
[16] Liu's telegram to Mao and the CPC Central Committee reporting the meeting with Stalin, cites in Mu, *Recordings of the First NPC.*
[17] O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies ".

to the calls made by the power holders in the government work report.[18] The second expression was the weak deputy-voter tie. Primary evidence reveals that, besides a very few number of deputies who were simultaneously the director of the provincial governments, most of the deputies had no wish to represent the people of their constituency. Instead, they tried to represent the interest of the whole country. Thirdly, most PMBs introduced by individual deputies, according to the documentary compilation of the 1956 NPC, were based on their personal experiences rather than voter's appeals. As a result, it significantly reduced the value of those bills as many of which lacked pertinence and focused on some very trivial events.[19] The compilation of deputies' PMBs shows the existence of some remonstrative PMB. However, it can hardly be the sign of a strong legislator-voter tie because all of these were collectively introduced by the provincial deputy group.[20] These PMBs were a means of local authority's appeal for more benefits given by the central government but not the local citizen's appeals against grievances.[21] Moreover, as a typical feature of this period, the NPC had many deputies whose educational backgrounds were extremely poor (some of which were even illiterates), and the majority of deputies lacked adequate, or had no, training for serving in the NPC. Their lack of either the will or the skills to represent their voters was highlighted and criticised by many pieces of published research.[22] Primary evidence in this research survey suggests that the recruitment of deputies of this calibre was caused by, or at least worsened by, the CPC's allocation of seats for the purpose of positive discrimination that would show the NPC's high representativeness.[23]

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[18] Speaking of Cai Chang, in The NPC, *Document Compilation of the Second Plenary Session of First Npc,* (Beijing: People's Press, 1955). P. 411-414.

[19] Those bills normally made suggestions without any rigorous investigations or not reflecting voters' willingness. E.g., Bill No.1 and 37; in NPC Secretariat, *Private Bills of the Third Plenary Session of the First NPC,* (Conference Documents, 1956). The latter example writes: When I visited Russian exhibition I saw a shallow-water barge that suits well to small rivers for its flexibility. Small rivers are everywhere in Hunan province, water transport is at present primarily depends on wooden sailboat. Promoting shallow-water barge would significantly enhance water transportation.

[20] E.g., Bill No. 43, 51, and 58. PMB introduced by an individual deputy were observed but quite uncommonly, one remarkable example is bill No. 14, 44, and 68. in I.bid.

[21] See Townsend, *Politics in China* p. 85.

[22] For primary evidence, see, Speech of Zhang Huiting, in NPC, *Document Compilation of the Second Plenary Session of First NPC*. pp. 500-01.

[23] Many pieces of evidence clearly illustrate that the CPC in this period could, and did, manipulate the election. Two official decrees are quite salient: "Advices on the Arrangement of the Democrats after the Implementation of NPC", and "Advices on Keeping the United Front Organisations after the Implementation of NPC", CPC Department of United Front, July, 1953. See also two supplementary decrees in Jan. 1954.

The supervisory function was the weakest NPC function in this period. Lacking institutional settings guarding the NPC supervision activities illustrates that the party had no intention to provide the NPC with adequate authority in designing the institutions. For the 'examination of government processes and outcomes' function, primary data shows that the deputies' most commonly seen attitude toward the government working report was to express their consent and appreciation. *"Fully and unconditionally support"* often formed a basis of their speeches.[24] At the same time, the survey of the primary evidence, including party resolutions, NPC files, and deputy speeches, found no clue showing that the party and the deputies had ever thought of establishing the 'regime failsafe' function.

3. Explanations from the intellectual perspective

The two Marxist intellectual tenets explain the abovementioned NPC institutional settings. Firstly, they explain the fact that the CPC leaders' emphasis on the NPC's decision making function were not echoed by corresponding institutional designs. As Chen concludes,

> *"Given its vanguard nature, party must be the leading force in a communist country. If the party allowed its decision-making to be vetoed or its activities to be controlled, it meant that a higher authority existed. This was what party leaders could not accept in any case".[25]*

Based on Chen's saying, this research claims that behind the institutional contradiction were the Marxist intellectual tenets: on the one hand, the basic Marxist legal doctrine that laws are the instrument of the ruling class (the people) in suppressing the inimical classes inevitably led to an idea that laws should be made by the wishes of the people. On the other hand, this idea was combined with the vanguard consciousness, which finally led to the idea that the CPC was the unquestionable representative of the people in making laws in the NPC.[26] In the same vein, the role of the NPC should be merely in

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[24] Speak of Meng Tai, in NPC, *Document Compilation of the Second Plenary Session of First NPC*. pp. 369-70.

[25] Chen An, *Democratic Experimentation under Party Dictatorship,* (Ph.D Thesis: Yale University, 1993).

[26] As the concept of 'people' is extremely abstract and vague, the 'wishes of people' is indeed intangible. It means that there must be an institution to represent the wishes of people – in China, it is the CPC. This is much easier understandable considering some studies of the reason as to why Rousseau's emphasise on an abstract "general will" finally resulted in dictatorships.

making minor changes to (such as the literal changes), and then assenting to, the decisions made by the party.

Secondly, the intellectual perspective explains why the party's stress on the representative function did not result in remarkable reforms of the related institutional settings. The idea that there was no conflict within the people was responsible for both the lack of remonstrative deputies and the weak voter-deputy tie. According to Frakt, Mao's concept of representation had two typical characteristics: firstly, quite similar to Burke, Mao stressed that deputies should make decisions independently; secondly, Mao emphasised that deputies should represent the people as a whole but not their constituency.[27] Moreover, as an important outcome of the vanguard consciousness, seeing interest conflicts as the result of the people lacking proper education and they can be solved by giving them Marxist ideas (instead of bargaining to consensus) removed the very foundation for deputies to act remonstratively. Therefore, deputies were more likely to be agents that brought central decisions back to their local area.[28] At the same time, deputies, having accepted the CPC's vanguard role, had no concern with fulfilling a remonstrative role in the NPC, for they did not attempt to remonstratively challenge the decisions made by the CPC. By the same token, the lack of remonstrative PMBs can also be explained.

Allocating seats for the purpose of positive discrimination resulted in many deputies lacking proper education and skills in fulfilling the representative functions. Its intellectual foundation was the concept of descriptive representation.[29] As a result of this concept, only a very poor peasant deputy would have served the proletariat regardless of his or her illiteracy; only a worker deputy would have served the proletariat despite a heavy workload made it almost impossible for him to spare times in hearing local voices. Interestingly, a quick survey of the newspaper articles during this period finds that those people (such as an illiterate peasant) being given deputyship were appreciated as constituting a very positive change in contrast to the legislatures before 1949.

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[27] Phyllis M. Frakt, "Mao's Concept of Representation " *American Journal of Political Science,* 23, no. 4 (1979): 684-704.

[28] This idea largely determined the related NPC institutional design. For example, Shaoqi Liu, "Report on the Constitutional Draft of the People's Republic of China," in *Selected Writings of Liu Shaoqi*, (Beijing: People's Press, 1985). Book II, pp, 157-59.

[29] Pitkin, *The Concept of Representation*. Chapter 4.

Thirdly, the vanguard consciousness explains why the supervisory function was not stressed during this period. One notable result of the vanguard consciousness was the direction of political power. Unlike the prevailing social contract idea stressing that political power comes from the people's authorising (bottom-up), the CPC's authority was legitimised by its inborn vanguard nature, which has in a top-down direction. Primary evidence seems to suggest that the CPC leaders always used "*let the people speak*" or other similar rhetoric to show how people should be given democracy,[30] which revealed their understanding that political power was in a top-down direction. Under this idea, put power under mass supervision was not an obligation but an indicator of the cadre's merit of having an 'appreciable working style'. Such consciousness can also be witnessed in the abovementioned changes of the official interpretations to 'democratic centralism', in which the balance of democracy-centralism turned gradually to be imbalanced.

4. Intellectual foundation of the three years development

Considering the fact that the NPC system started declining after 1957 and was totally suspended during the CR, it is important to reveal the reason as to why the NPC institutions developed rapidly in the initial three years. It is particularly worth highlighting that none of the early day Marxist theorists intended to cripple or nullify the legislature and to build the state power directly under the control of a Communist political party. This was particularly so in the writings of Marx and Engels. According to Marx, his castigation of the capital-controlled Western legislatures never led to the conclusion that legislatures should be abandoned, or should be dominated by a Proletarian party; rather, his ideal legislature should be the one in which disadvantaged classes can equally share political power. Engels set the Paris Commune as the model of the Communist legislature. In his *Postscript to "the Civil War in France",* Engels fixed at least two basic principles of the Communist legislature: universal suffrage, and the power of voters to recall incompetent deputies. In the Leninist stage, although the dominant position of the Communist party was strengthened, principles of Marx and Engels were not removed.[31] Lenin further stressed that the work of party and legislature

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[30] For example, Mao's speech in the Enlarged CPC Central Working Conference, Jan. 30. 1962; cites in Reseach Section of the NPCSC General Office, *Exceptions of the Speeches of Core Leaders on the Development of Socialism Democracy and Legality (Zhongyao lunshu zhaibian),* (Beijing: Law Press, 1988).

[31] E.g., Vladimir I. Lenin, *Speech Delivered at the Second All-Russia Congress of Soviets of*

should not overlap: *"although the Communist party is unquestionably the leader of the legislature, it is wrong that "minor matters are dragged before the Political Bureau"*.[32] Even Stalin in the early stage appreciated those principles, including his stress on the party -legislature division, and the widely known 'whip' concept that *"the universal, direct, and secret suffrage in the Soviet Union will be a whip in the hands of the population against the organs of government which work badly"*.[33]

Once being rigidly practiced in the designing of legislative institutions, these principles can be seen as very positive intellectual sources. Primary evidence shows that the influence of those positive signs on the CPC reached an apogee during this period, which coincided with the NPC's three years quick institutional development.[34] The overlapping of time was arguably not a coincidence. Those positive intellectual sources prevented the party from grasping all functions of the institutions of the state power, including the NPC, and thereby secured the NPC to have enough 'space' to develop its institutions. The salient example was the abovementioned belief that although the CPC was unquestionably the leader of the regime, it could not turn its decision into a decision of state without the NPC assenting. Similarly, although it was not possible for the NPC to be a whip in supervising political power, practising those ideas in the designing of the NPC institutions at least provided it with an adequate level of institutional strength, by which its functions and institutions had a basic protection. For example, power holders in this period did not attempt to remove the NPC's supervisory function; instead, some attempts to strengthen it could be observed.[35]

Peasants' Deputies (1917), (in Marxists Internet Archive Library: http://www.marxists.org/archive/); Vladimir I. Lenin, *Three Constitutions or Three Systems of Government (1905),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/).

[32] Vladimir I. Lenin, *Eleventh Congress of the R.C.P. (B.),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/).

[33] Josef. V. Stalin, *Interview between J. Stalin and Roy Howard (1936),* (in Marxists Internet Archive Library: http://www.marxists.org/archive/).

[34] For example, the CPC did not reject universal suffrage, but used "the prerequisites have not been well matched (Shiji Bu Chengshu)" as an excuse of not adopting it in 1954 Constitution. In Liu, "Report on the Constitutional Draft of the People's Republic of China."

[35] Primary evidence shows that Mao even went further by thinking the possibility of introducing the bicameralism to strengthen the supervision; that attempt ended in 1957. See Jiandang Yang, "Mao's Contribution to the People's Congress Institutions 1954-1957." *Mao Zedong Thought Study,* 26, no. 5 (2009): 88-91.

IV. Decline of the NPC: 1957-1976

The Anti-rightist Movement in 1957 marked the gradual derailing of the Chinese politics from the doctrines settled by Marx, Engels, and Lenin. With a series of mass movements launched by the CPC, the NPC institutions settled by the 1954 constitution were gradually distorted or even destroyed. The intellectual perspective may provide a new approach in revealing the origin of that change.

1. The distortion of the Communist ideas

The remarkable increase in the CPC's vanguard consciousness can be witnessed early in 1956; in amending the CPC Constitution in the Eighth Party Conference, the CPC for the first time overtly declared itself as the vanguard of Chinese working class and the highest institutional settings of working class.[36] It also claimed that the party was the highest organisation of the proletariat; it must endeavour to manifest its righteous leading and core position in every aspect of the Country.[37] The strengthening vanguard consciousness further developed into a distorted form of Mao's personal cult, by which Mao and the party became an unquestionable embodiment of truth. To use Macfarquhar's language, *"(at least before the Culture revolution) the CPC ruled unchallenged. Its writ ran throughout the nation. Its leader, Mao Zedong, was held in a reverence that even Stalin would have envied."*[38]

One of its outcomes was to encourage the overlaps between the party organisation and the political institutions. In so doing, the latter, including the NPC, gradually lost their power. Another outcome was to replace the 'rule by law' principle by the 'rule by the wishes of an individual or the wishes of a small group of people' principle. Therefore institutionalised running of political power was not welcomed as it would hamper the individual or oligarchic ruling.[39]

Over-emphasising the class struggle concept was another characteristic. Following the abovementioned 'carrot and club' metaphor, the first outcome of such over-emphasis

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[36] Before then, the CPC had declared that the working class was the vanguard of the masses. Therefore, the CPC had been indeed the 'vanguard of the vanguard'.

[37] Party Constitution of the CPC (1956), Preamble.

[38] Roderick MacFarquhar and Michael Schoenhals, *Mao's Last Revolution,* (Cambridge, Mass.: Harvard University Press, 2006). pp. 1-3.

[39] A salient example of Mao's talk can be seen in Reseach Section of the NPCSC General Office, *Forty Years Institutional Development of the People's Congress System (Renmindaibiaodahui Zhidujianshe Sishinian),* (Beijing: Democracy and Legal Press, 1990). p.102.

was unlawful dictatorship and violence. The 1957 Anti-rightist movement aiming to purge the rightists who were believed to challenge the leadership of the CPC became a prelude to a series of movements purging the dissidents by labelling them as the inimical classes and imposing the class dictatorship. With the movements becoming gradually fierce, not only were the non-CPC political participants banished from the political life, but party members, even the President of China, were also banished, jailed, and tortured to death. Its result was to narrow political participation, for the distorted Marxist belief claimed that many enemies of the inimical classes were waiting for every opportunity to subvert the Communist regime. Its negative effect was both vertical and horizontal: vertically, 'distance' between the masses and the central power holders was significantly prolonged; horizontally, the NPC was less invited to bring forward its opinion during the policy making process.

Meanwhile, the over-stressed class struggle consciousness also made the 'carrot' too sweet. Based on the abovementioned bifurcation between the substance and form of democracy, the substance of democracy was pushed to an unprecedented height. Meanwhile, forms of democracy, that included a series of institutional settings, regulations, and laws were accused of inhibiting the people enjoying their substance of democracy. Therefore any institutional or legal constraints regulating democracy became a harmful 'nutshell' that had to be smashed. The essence of this democracy, normally called as 'gross democracy (daminzhu)', was a kind of direct democracy or even anarchy.

As a result of the abovementioned two distortions, the proletarian democratic dictatorship since Lenin, as well as its Chinese version 'people's democratic dictatorship', was distorted to claim that the fierce dictatorship should be directly imposed by the proletariat (before the distortion, it means that the proletariat use laws to impose dictatorship); in so doing, the people were believed to enjoy a higher level of democracy. Its outcome was the total abandoning of the laws and the legal system, including the NPC as a decision making and representative institution.[40]

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[40] Early in the 1959 conference in Mount Lu, RMRB Chief Editor Wu suggested Mao that law-making process should be strengthened and the 'rule of law' should be fulfilled. Mao answered that law-making is to "*tie up our own hands and foots*". Cites in Danyang Li, *From Russian Proletariat Dictatorship to Chinese People's Democratic Dictatorship (Cong eguo de wuchanjiejizhuanzheng dao zhongguo de renminminzhuzhuanzheng),* (First Published in Independent Chinese Pen Centre: http://www.chinesepen.org, 2006). Mao's favour of an unlawful prerogative power can be observed early in 1930s in his *Hunan Report*. For related research, see Baum, "Modernization and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality"; Frakt, "Mao's Concept of

Under the impact of the above distortions, not only was the NPC's law-making function removed, but it also had other functions abandoned. This change shows that whenever democracy means unlawful anarchy, the NPC turned out to be redundant. Liu's tragedy is an extremely salient example: Liu was the President of China; during the CR he was tortured to death for his attempts at fighting against the prerogative power and protecting the political system and legal system.[41] When he was kidnapped by the radical Red Guards to a denunciation gathering, he held aloft the 1954 Constitution and said to Red Guards that:

> *"I am the President of China, you can denounce me, but I have to protect the dignity of the country. Who has impeached me? Without the NPC no one could send me to trial. In doing so you are denouncing the country! I am a civilian as well, why do you not let me speak? Constitution protects personal freedom; those against Constitution must be subjected to legal sanction! "*[42]

2. Withering of functional demands and institutions

Compared with the period of 1954-1956, the functional and institutional characteristics of this period can be easily concluded as follows: the theme of this period was that the changing intellectual backgrounds gradually nullified all functional demands, by which all institutional settings withered away correspondingly.

(1) Decision-making

The change of the decision-making functional demand can be depicted by a line declining to the ground. The demand for the law-making function kept decreasing as the importance of the legal system kept being denounced and the dependence on mass movements in social administration was rising. Mao's prevailing personal cult and the 'rule by an individual' idea also worsened the situation. Its negative impact can be almost immediately witnessed from the sharp fall of the quality and quantity of law-makings since 1957. The NPC and its NPCSC (the NPCSC was partially given law-

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Representation".

[41] For example Shaoqi Liu, "On Rightly Handling the Inner People Conflictions in Political-Legal Works," in *Selected Writings of Liu Shaoqi*, (Beijing: People's Press, 1985). Book2.

[42] Quote in Reseach Section of the NPCSC General Office, *Forty Years Institutional Development of the People's Congress System* . p. 119.

making function since 1959) made no law within the period of 1959-1966.[43] The assent-giving function was also crippled as it was distorted as a function of 'resolutely giving assent without any question'. This distortion had a typical institutional outcome of reducing the viscosity to a very low level. A typical example was the 'Great Leap Forward' movement in which the CPC leaders brought forward many impossible national construction plans in trying to catch up with the economic development of the major Western countries. These plans were all given assent by the NPC without any change; some deputies expressed anxiety about the plan, but they were 'expelled' from the NPC on grounds of trying to weaken socialism. A RMRB article perfectly shows how the changing intellectual idea lowers viscosity. In refuting the complaint of some 'rightist deputies' that all decisions approved at all levels of the People's Congress were end-products supplied by the party, which turned the legislature entirely a formalism, the article wrote that "*it's a merit but not a defect that the party provides the Congress with end-production decisions; it is because the party is the vanguard of the whole society, which represents the unique interest of all the people.*"[44]

(2) Representation

The representative functional demand declined sharply under the impact of the distorted vanguard consciousness. Moreover, worshipping the anarchical 'gross democracy' instead of representative democracy also contributed to the weakening of the related functional demand.[45] Its direct impact on the institution was the sharp reduction of the quality and quantity of the PMBs, which is shown below (table 4):

Table 4: *Number of PMBs introduced in the NPC (1954-60)*

	1954	1955	1956	1957	1958	1959	1960
Total	39	214	176	245	81	80	46
Politics and Law-making related		39		23	11	1	0

Note: 1. Data for the number of politics and law-making related private bills in 1954 and 1956 is currently not available.

2. After 1960 the NPC were not held regularly, data is not comparable.

Source: NPCSC Research Section*, Documentary Compilation of PCs*. In Liu and Cheng, *Encyclopedia of Institution-Related Works of the People's Congress 1949-1998;* pp. 855-56.

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[43] Ibid.
[44] RMRB, 24-07-1957.
[45] Examples can be widely observed in the Mao's writing in this period. See Zedong Mao, *Selected Writings of Mao Zedong, Vol.5,* (Beijing: People's Press, 1977). p.467.

A survey made by this research based on the PMB compilation of the 1962 NPC Plenary Session shows that (1) Collective PMBs (bills introduced by more than one deputies) requiring central support for regional interests sharply decreased to two only (No.161 and No. 168). (2) The number of individual PMBs asking for regional interest also decreased to ten. (3) Remonstrative PMBs were almost extinct; only one can be seen requiring the Department of Railway to compensate for damage in an accident (No. 88).[46]

Another institutional outcome of the withering representative functional demand is the deputy's age and education level, the rise of the former and the fall of the latter illustrate that the deputies' working ability turned out to be insignificant.[47] Meanwhile, a candidate's political loyalty and class belonging[48] became an overwhelming deputy selection criterion. This further illustrates that whether deputies had enough competence in representing their voters were not the CPC's primary concern.[49]

(3) Supervision

The supervisory function was crippled earlier than the others as it was not well developed in the first three years since 1954. The intellectual changes encouraged the CPC to advocate a kind of 'masses' direct supervision on government'. This action contained bureaucratism not by a legislature, but by making it directly accountable to the masses.[50] Its direct damage to the function of examination of government processes and outcomes was the abeyance of examination of government working reports. To be specific, the NPC never examined the work report of the Supreme Court and the Supreme Procuratorate since 1958; that task, as well as the more important task of examining the budget and final accounts, were gradually transformed from the Plenary Session to the NPCSC. By 1966 these works were totally stopped.[51] Meanwhile, the fact

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[46] NPC Secretariat, *Private Bills and Responses of the Third Plenary Session of Second NPC,* (Conference Documents, 1962). See also Xingzhong Yu, "The 1962 and 1963 Sessions of the Npc of Cpmmunist China " *Asian Survey,* 4 (1964).

[47] For specific data, see O'Brien, *Reform Without Liberalization*, p. 72.

[48] A crucial process of the CPC's attempt to establish its class-based regime was to identify every individual Chinese people's class attribute (to decide which class each people belong to).

[49] RMRB, 18-05-1958.

[50] White, *Communist and Postcommunist Political Systems : An Introduction*. p.126.

[51] Compilations of the Agendas of the NPCSC Conferences, in Reseach Section of the NPCSC General Office, *Documentary Compilation of the People's Congress System (1949-1990) (Zhonghua renmin gongheguo renmin daibiao dahui wenxian ziliao huibian),* (Beijing: Democracy and Legal Press, 1990). pp. 748-803. Compilations of the Agendas of the NPC Conferences, in zheng Liu and Xiangqing Cheng, *Encyclopedia of Institution-Related Works of the People's Congress 1949-1998 (Renmindaibiaodahui Zhidu Gongzuo Quanshu),* (Beijing: Law Press, 1998).

that any deputy having different views with the party would be removed from the NPC shows that the party had no intention of letting the NPC fulfil the regime failsafe function by giving deputies even a basic speaking immunity. The most salient example is the 1957 NPC that was under the shadow of the 'Anti-rightist Movement'. According to the survey of this research, approximately eight out of ten deputy speeches merely showed their appreciation for the movement. Those deputies that were denounced as rightists were compelled to confess their 'crime against people' and make self-criticisms in the meeting.[52] In the following year these 'rightist deputies' were deprived of their deputyship for their 'attempt at subverting people's democratic dictatorship'.[53]

(4) Legitimising

Having firmly consolidated its legitimacy of ruling, the CPC had no further need during this period to legitimise both its policies and regime by any institution. According to O'Brien, "*use (the NPC) as a vehicle for integration and legitimacy peaked in the mid-1950s and gradually declined thereafter.*"[54]

The attempt at reducing public access to political life and shutting down the institutional channels for political participation were clear indicators that the institutional design actively echoed the waning legitimising functional demand. To be specific, since 1960 the NPC Plenary Session were held without media access. Journalists were not allowed to enter the conference hall, reports were unified by the propaganda department; deputy speeches were no longer published and the compilations of the PMBs were published without open circulation.

Since 1966 to 1974, the NPC witnessed an eight year abeyance. It partially restarted after 1974 with extremely passive functions and was under firm political controls. According to an interviewee who was a NPC deputy in 1978, the conference of this period was held in an extremely secret environment to which deputies went into the conference hall through a secret underground passage in order to avoid rising public concern. The media was even not told about the conference.[55] Generally speaking, the time coincidence between the suspension of the NPC sessions and that the distortions of

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[52] Compilation of deputy speech, in The NPC, *Document Compilation of the Forth Plenary Session of First Npc,* (Beijing: People's Press, 1957).
[53] The Resolution of the Fifth Plenary Session of the First NPC on Removing Ten Rightist NPCSC Deputies from the Ethnic Committee, the Bills Committee, and the National Defence Committee. (01-02-1958).
[54] O'Brien, *Reform without Liberalization*. p. 85.
[55] Interview, 27-10-2011.

the Marxist intellectual ideas reached an apogee illustrates that once changes of intellectual ideas removed the authority's demands on certain NPC functions, the existence of this function and the corresponding institutional design would have became 'redundant' as well. Therefore it was not very surprising that the 33rd NPCSC in 1966 made a resolution to suspend the congress sessions. Perhaps Kang's report on this conference perfectly illustrated this logic:

> *A vigorous and unprecedented movement of the CR has swept the country in all aspects, including labour, peasant, intelligentsia, cadres, Parties, and colleges. This struggle is of great importance: it is not only a matter of solidifying our proletariat dictatorship, preventing the restoration of capitalism, but also a matter of transforming everyone's mind and soul. Inevitably, certain deputies may be criticized or purged; those deputies cannot <u>be invited</u> to the NPC or they would say the NPC as a "royalist"!* Therefore, postponing the NPC is beneficial to the CR… It is absolutely acceptable to postpone or recall the NPC in this period of great revolution. Should postponing be harmful to the socialist democracy? Never! To the contrary, <u>since the CR is a "gross democracy" movement in the form of speaking out freely, airing views fully, holding great debates and writing big-character posters freely, it is an unprecedented socialist democratic movement which is of great value in building socialist democracy.</u>*[56]

*) "NPC as a royalist (Baohuangpai)" meant it attempts to protect the institutional settings that were criticised by the radicals as a valueless redundancy.

Conclusion: Two types of Marxism

Since Lenin's initiative attempt to practise the basic Marxist tenets in the designing of a political system, the state legislature in a Communist regime was required to institutionally reach at least four standards: (1) to be a necessary 'agency' in

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[56] Kang's Report on the 33th NPCSC conference of the third NPC in 1966. Cited in NPCSC Research Section: *Forty Years Institutional Development of the People's Congress System,* the underlines are mine. Kang is, according to Macfarquhar, Mao's most trusted enforcer of radical politics.

transforming party decisions into policies or laws, with the precondition that all of the party decisions could be given assent in the legislature; (2) the grassroots masses' claims could be heard by the central decision makers, with the precondition that the voice should not conflict with the vanguard communist party; (3) to provide deputies with basic institutional support in order to oversee the executive; (4) to be a place where the elite could participate in the political life, by which a sense of belonging was created on the level of both policy and regime, with the precondition that the party's preclusive control of political power was not threatened. [57]

However, as Section Three of this chapter showed, following the firm establishment of the Communist regime, two tenets might have been radicalised and distorted, which might have immediately resulted in a party 'swallowing' the people under the pretext of its vanguard nature. Under such circumstances, the institutional design of the Communist legislatures would be fundamentally changed into a 'rubber stamp'.

For the NPC, as abovementioned, adhering to the original meanings of the Marxist intellectual tenets benefited its development in the initial few years.[58] However, the distortions and radicalisations of the tenets happened in China in 1957 to 1978.[59] During the apogee of the distortion, even writings of the early period Marxist gurus were selectively banned. For example, Engels' *Introduction to Karl Marx's the Class Struggles in France 1848 to 1850* was intentionally precluded from the Chinese official 1972 edition of *Selected Works of Marx and Engels.*[60] Engels in this article openly pointed out that the violent class struggle was outdated and that the class struggle should be carried out within the existing legal and institutional systems, particularly the established legislative system.

In the following analysis, the concept "orthodox Marxism" is used to refer to the understandings of the two basic tenets that largely followed their original meanings described by Marx, Engels, and Lenin. To the contrary, the use of 'Maoist Marxism'

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[57] Martin McCauley, *The Soviet Union since 1917,* (London; New York: Longman, 1981). p.27; Jerry F. Hough and Merle Fainsod, *How the Soviet Union Is Governed,* (Cambridge: Harvard University Press, 1979). p.82.

[58] Xinmin Zhu, *Research on Cpc Political Reform 1978-1990: China's Post 1980s Political Development (1978-1990 zhonggong zhengzhitizhi gaige yanjiu),* (Taibei: Yongran Culture Publisher Co.Ltd, 1991). pp. 110-12.

[59] Some pieces of pioneering research mentioned that dichotomy and gave it various names. For example, Schurmann, in his *Ideology and Organization in Communist China*, calls them as "defenders of the faith" and "defenders of the institutions". Macfarquhar and other Culture Revolution researchers normally call Maoist Marxism as 'radical Marxism'.

[60] This article was not seen until the 1995 edition.

refs to the radicalised distortions of two tenets. Based on the study of this chapter, the table below compares the varieties of two ideas that are the intellectual foundation of the NPC institutional change.

Table 5: *Two types of Communist intellectual backgrounds*

	Orthodox Marxism	**Maoist Marxism**
Legal Concept	•Rule by Law •Class based: laws are both means of social regulation and class dictatorship)	•Rule by an individual •Class based • Legal nihilism and a 'total dictatorship': laws are obstacles to the imposing of dictatorship
Representation Concept	No interest conflicts within the people with a same class attribute, resulting in a unique understanding of representative democracy, stressing its largely top-down direction	The gradual vanishing of representation replaced by a 'gross democracy'
Concept of Democracy	•Class-based Democracy: people's rights come from class orientation; therefore political activities should be under the guidance of the CPC who is the vanguard of the proletariat class.	•Polarised: (1) Politics under the CPC domination; no institutional approach of political participation. (2) A 'gross democracy' leads to an anarchical direct democracy without institutional and legal regulations.

Table by author

Chapter 6. Intellectual Diversification and Four NPC Reform Related Groups Since 1978

Introduction

In 1976 the Death of Mao and the purge of the 'Gang of Four' that were the most radical enforcers of Mao's distorted Marxist doctrines heralded the end of radical politics. Behind the great political change were a remarkable intellectual transformation and the ensuing intellectual diversification. The diversification was caused by the rise of the non-Marxism liberal democratic intellectual ideas and the changes of the Marxist intellectual ideas. Presenting such diversity was vitally important as those changes made the intellectual background no longer dominated by a single philosophy but several distinct ideas while having some matching characteristics. Based on the introduction to these ideas, an intellectual spectrum is drawn to show the relationship of those ideas.

The final section shifts the focus from the intellectuals to the influencers of the NPC institutions who were simultaneously the bearers of intellectual ideas. In this section of study the people who actively influenced the NPC institutional changes are categorised into four groups. The basic characteristics of each group are introduced.

I. The Rise of Non-Marxist intellectual Ideas

The rise of the non-Marxist intellectual backgrounds was the primary reason for the intellectual diversification since 1978. This section introduces its origin, two basic characteristics, and, perhaps more importantly, its nationalist nature.

1. Origin and development

Ironically, the early introduction of the non-Marxist intellectual ideas became observable in the period before the gradual release of censorship after 1978. The early introduction of these ideas benefited from the systematic translation and introduction of the literature criticising the so called Russian Soviet Revisionism – in the Chinese official rhetoric, it refers to a series of political changes that happened in Soviet Russia followed by the death of Stalin. However, with the deterioration of Sino-Russia relation

after the late 1950s,[1] it rapidly developed into a project of introducing a large number of publications criticising Soviet Russia. Within this process literature criticising the negative effects of the Marxist intellectual backgrounds, and its radical form in particular, was also introduced. A remarkable example in point was the publication of Djilas' *The New Class* in 1963, in which the author points out that Marxist doctrines, particularly their radical patterns were a "*lie that cannot be broken*".[2]

Another example is Sweezy's *On Transition to Socialism* – its Chinese edition was printed in 1975. In the translator's preface it says "*the translation of this book was to reveal that Soviet Russia has been ruled by the state bourgeoisie who stands for the interest of privileged class and detaches from the working class.*"[3] It is true that when those publications were introduced to China, the distortion of Marxism and its devastating effects had not been obviously mentioned in the country. However, following the cooling down of the CR 'mania' and a society-wide rethinking of this movement, the publications of this kind shocked the readers whose mindset had been dominated by the prejudiced education and propaganda for a long time. University lecturers that actively advocated reforms in the 1980s confirmed in interview that books such as *The New Class* elicited in them a great intellectual shock and encouraged them to further probe the fallacies of the Marxism doctrines that were once deemed as an oracle.[4]

There was another kind of publication that heralded the introduction of the non-Marxist intellectuals. For the purpose of criticising the democratic socialist doctrines or the so called 'Western Marxist' doctrines, literature of typical democratic socialists, including those written by Bernstein and Kautsky, were translated and published to provide scholars with a 'specimen' for committing criticism. Also in this type were the literary works by such personalities as Kafka, Sartre, and Ehrenburg.[5]

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[1] This period refers to the 'Sino-Soviet Split', see Adam Westoby, *Communism since World War Two,* (Brighton: The Harvester Press, 1981). pp.159-60; Mingjiang Li, *Mao's China and the Sino-Soviet Split Ideological Dilemma,* (Abingdon: Routledge, 2012). p. 12.

[2] Milovan Djilas, *The New Class : An Analysis of the Communist System,* (London: Thames and Hudson, 1957). pp. 41,64,75. For a detailed introduction of the translation of this book, see Edward Friedman, "Three Leninist Paths within a Socialist Conundrum," in *Three Visions of Chinese Socialism*, ed. Dorothy J. Solinger, (Boulder: Westview Press, 1984).

[3] Translator's Preface, in Paul M. Sweezy and Charles Bettelheim, *On the Transition to Socialism (Chinese Trans.),* (Beijing: Commercial Press, 1975).

[4] Interviews with university lecturers who were active in the 1980s reform. Interviews conducted in 27-09-2012, 10-10-2011, and 11-10-2011.

[5] Jianying Zha, *Interviewing the 1980s (Bashiniandai Fangtanlu),* (Beijing: SDX Joint Publisher, 2006). p. 69. Ehrenburg is a leading writer of Russian thawing literature.

Many Western classical writings were introduced or reprinted in China after the 1960s, which can be deemed to be another source of the introduction of foreign intellectual ideas. Those writings, such as *The Spirit of Laws*, were written by Western cutting edge thinkers calling for humanity, liberty, equality, and an open society.

Publications of this period had at least two effects. On the one hand, they questioned the vanguard position of the Communists by either revealing that the vanguard may be distorted into an interest group or encouraging individual's independent thought and behaviour. Both of these heralded the introduction of foreign liberal democratic ideas. On the other hand, they challenged the idea that the society and politics are class-based (or at least the claim that class-conflict is the theme of social and political development).

The introduction of new ideas can be more easily observed in the post-CR period (approximately after 1978). During this period not only did the rethinking about what had happened during the CR become popular, but also the Communist 'new classes' became observable in China. These changes thereby facilitated the opening of a 'sluice' by which various Western thought rushed into the intellectual 'barren earth'.[6] Compared with the period before 1978, the period after had at least two features. First, the profundity of reflection was significantly deepened. Some translations even directly questioned the legitimacy of Marxism. One remarkable example was Orwell's *1984*, its popularity and influence led to its three times reprinting (in 1979, 1985, and 1988).[7] Doctrines criticising Marxism were spreading rapidly and to some extent overtly after 1978.[8] Second, intellectual elite actively participated in the work of introducing Western thoughts, which dramatically accelerated this process. According to Xu, there were at least three groups of intellectual elite attempting at translating and introducing western thought so much so that their publications went far beyond the scope of those translations offered before 1978.[9]

The large scale intellectual importation since 1978 could be identified as two intellectual shockwaves. 1982 and 1983 saw the first shockwave with the theme of

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[6] See e.g., Carma Hinton et al., *Morning Sun* (Sydney, N.S.W.: ABC, 2006). (Documentary Film); also:Yongyi Song, "The Yellow Cover and Grey Cover Books in the Cultural Revolution (Wenge zhong de Huangpishu yu Heipishu) " *21st Century,* 42, no. 8 (1997): 59-64.

[7] Huiyan Xu, "The Translation and Publishing of Orwell's Novel *1984* In China (Aoweier 1984 zai Zhongguo de Fanyi he Chuban) " *Mingzuo Xinshang*, no. 5 (2011).

[8] "Introduction", in Brugger, *Chinese Marxism in Flux, 1978-84*.

[9] Ziming Chen and Youyu Xu, *Letter Correspondence on the Groupings of the 1980s' Thinking and Culture,* (Universities Service Centre for China Studies Database, Chinese University of Hong Kong http://www.usc.cuhk.edu.hk/PaperCollection/Details.aspx?id=7227, 2009).

'humanitarian and alienation'. The introduction of the humanitarian concept contradicted the fierce class struggle concept claiming that the 'inimical classes' should be eliminated by a ruthless dictatorship. Instead, it stressed that the 'essence' of Marxism should not be 'struggle' but 'humanitarianism'.[10] The alienation concept borrowed its original meaning from Marxist philosophy (its original meaning in Marx was that the human being could be enslaved by its own production that was created in order to emancipate human being) to stress a possibility that the vanguard Communists who claim themselves to have a higher moral standard may alienate into a group enslaving the people. Obviously, both concepts directly contradicted the Marxist intellectual tenets that explain the reason as to why the CPC launched an Anti-spiritual Pollution Campaign struggling against it.

The influence of foreign intellectual ideas reached another apogee in 1986 (no fixed period, probably since 1985) until 1987. Within the period, democracy and liberalisation were openly advocated. It is a vitally important issue in understanding the meaning of liberal democracy that was normally used by the advocates without any specific and rigid definition. Generally speaking, on the one hand, the concept of liberal democracy observed after 1978 largely denied Marxist class based democracy. Its advocates normally questioned or even castigated (1) class based democracy providing the people belonging to the proletarian class with a kind of righteousness to impose dictatorship against those who were marked as inimical classes; and (2) the vanguard consciousness that disdained the intellect of the masses, particularly their ability to enjoy political right (e.g. lack knowledge to make decision or choose deputies). However, on the other hand, the specific meaning of liberal democracy varied dramatically. The reason for this variety, as claimed by this research, is that (1) the advocates' lack of a systematic understanding of the kaleidoscopic variations of the Western liberal democratic ideas. (2) Liberal democracy was largely used as an abstract sign or a label showing an idea or a thought's non-official, or more exactly, non-Marxist characteristic. Therefore, 'users' of this idea had no need to rigidly define the term.

In summarising the meaning of 'liberal democracy' concept used in the primary data this research observed, particularly the writings and speeches of those people who can be regarded as having liberal democratic intellectual background, it can be concluded that the use of this concept in the context of political reform, particularly the legislative

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[10] Youyu Xu, *Intellectuals of China in the Recent Thirty Years (Zhongguo Sanshinian Gepai Shehui Sichao),* (Records of the speech in Beijing: 28-02-2009).

development related context, referred to (1) the belief that politics should be publicly accessible, including greater participation and transparency; (2) the consciousness of individual interests, stressing the importance of individual or regional interests; (3) the belief that political power is not reliable even if the power holders claim themselves to have a high moral standard, which led to the belief of checks and balances and the 'rule of law' consciousness. Those three ideas had an intellectual origin in the abovementioned intellectual importations and directly contradicted the two Marxist intellectual tenets.

Understandably, to protect the 'orthodoxy' of Marxism, the CPC launched counterattacks in marking those ideas to be 'bourgeois'.[11] However, the CPC's attempt to stop the new ideas was largely ineffective. To use Tsou's language, it was because of the inherent backwardness of the Marxist intellectual background and such backwardness was extremely salient in the 1980s that was an age of transformation; it was also because of the impossibility of reconciling two of the distinct intellectual backgrounds.[12]

2. Key characteristics

The first characteristic was that the controlled and limited access to the abovementioned publications resulted in a qualitative and quantitative limitation of the people with an opportunity to get access. The CPC applied a rigid hierarchical information censorship after the establishment of the regime. Under that system, the abovementioned publications were marked for 'internal distribution', confining the accessibility within the governmental and party officers with certain bureaucratic level and within the library or archives of major universities, colleges, and research institutes.

As published personal recollections and academic research indicate, the hierarchical censorship was not rigid enough to insulate ineligible access. Its loopholes were further enlarged by the masses' growing desires for new thought.[13] However, even so, the spreading of the new ideas was still geographically limited in major cities where major

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[11] A specific study is in Baum, *Burying Mao: Chinese Politics in the Age of Deng Xiaoping*. pp. 98, 102, 111.

[12] Tang Tsou, "The Tiananmen Tragedy: The State-Society Relationship, Choices, and Mechanisms in Historical Perspective," in *Contemporary Chinese Politics in Historical Perspective*, ed. Brantly Womack, (Cambridge: Cambridge University Press, 1991). pp. 278-79.

[13] Ibid. p. 285; Song, "The Yellow Cover and Grey Cover Books in the Cultural Revolution".

universities and government organisations were located. Meanwhile, the cost of being punished for leaking those sources to the ineligibles also confined the circulation of the publications even in the major cities. Based on pioneering research, the readers of those publications were the staff and students of major universities and research institutes located in major cities, and a limited number of citizens in major cities (high level governmental officers had the opportunity to read but never advocated those new ideas).[14]

The second characteristic should be more crucial. External ideas introduced in the 1980s belonged largely to the area of philosophy, literature, and history, which made this period an age of 'cultural renaissance'. As a sharp contrast, importations of social science study, particularly political science and sociological theories, were considerably fewer (this trend is illustrated from a list of the translated publications, see appendix). The remarkable internal and external hindrances should be responsible for that limitation.

The internal hindrance had a bifurcated origin. On the one hand was people's deliberate avoidance of taking the risk of challenging the officials' ideological taboo. The ambiguity of the taboo further increased that risk.[15] On the other hand was a kind of historical 'inevitability'. Based on his own experience, a pro-democracy intellectual elite talked about a metaphor in the interview that *"when someone get into an exquisite garden, their eyesight must be firstly attracted by flowers but not twigs and leaves; they would be marvelling at the colourful flowers but be not thinking of how the twigs and leaves nourish the flowers."*[16] This metaphor vividly illustrates the reason why the intellectual elite focused primarily on the Western philosophical thought such as humanitarianism and alienation but not on basic social political theories or the social political basis of the philosophical thought. Moreover, some people even belittled social political research while seeing foreign philosophical ideas as an elixir. Gan, one of the

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[14] This claim is based on the following literature: Fangzheng Chen and Guantao Jin, *From Youthful Manuscripts to River Elegy : The Chinese Popular Cultural Movement and Political Transformation 1979-1989,* (Hong Kong: Chinese University Press, 1997). Zha, *Interviewing the 1980s*. Jian Yang, *Underground Literature During the Cultural Revolution (Wenge zhongde Dixiawenxue),* (Beijing: Zhaohua Press, 1993). Zhanyun Shen, *Grey Cover Book, Yellow Cover Book Huipishu Huangpishu,* (Guangzhou Huacheng Press, 2007).

[15] The CPC never clearly defined the range of 'unacceptable thinking'; therefore, something that was acceptable today might cause trouble tomorrow. Weiguang Zhong, *Research on the Mainland China Intelligentsia of the 1980s,* (1993). Part 1.

[16] Interview 27-11-2011.

leading intellectual elite in the 1980s and the chief editor of "going to the future" translation series, said in his recollection:

> *I had completely no interest in criticising the institution ... someone may complain about the political system, it however cannot illustrate your profound thinking. The profundity depends on the extent you enter into Western thought and philosophy.*[17]

A direct result of the internal handicap was that the social-political related intellectual importations were largely absent. The situation slightly changed during the latter half of the 1980s. This change was arguably due to the fact that the economic reform in this period went to a deadlock, thereby made inevitable the reforms of politics, which partially resulted in the reform influencers' change of focus from philosophy to social-political theories.[18]

However, the importation of socio-political theories immediately encountered an external, or the official, handicap, which was particularly remarkable in the Anti-Bourgeois Liberalisation Movement. The negative effect of the censorship was seen most remarkably in the importation of political theories that was very crucial in intellectually supporting the NPC development. The perhaps most salient example, although not happened in the 1980s, was the abridgements in the translation of the *Handbook of Political Science* in 1996, in which Polsby's chapter introducing the legislative system was cut off. In his recollecting article, Xu mentioned that in 1989 a series of translations of political science studies were ready to be printed but were suspended when the political turmoil broke out.[19] Victims of that abeyance including Wheare's *Modern Constitutions*, Pye's *Political Culture and Political Development*, Binder's *Crises and Sequences in Political Development*.

The negative effect of such an absence will be observed for several times in the following analytical chapters. In simple terms, as previously mentioned, the importation of the non-Marxist intellectual ideas had largely weakened the foundation of the two communist intellectual tenets. However, the intellectual vacancy it left was not adequately filled up by external sociological and political theories. Under these circumstances, people with liberal democratic intellectual ideas saw clearly the

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[17] Interview with Gan Yang, in Zha, *Interviewing the 1980s*.
[18] Harry Harding, *China's Second Revolution : Reform after Mao,* (Washington, D.C.: Brookings Institution, 1987). pp.75, 86. Zha, *Interviewing the 1980s*. p. 126.
[19] Chen and Xu, *Letter Correspondence on the Groupings of the 1980s' Thinking and Culture*.

drawbacks of the Marxist intellectual tenets and the corresponding institutional settings. However, they remarkably lacked knowledge to advocate any feasible and constructive suggestions or plans regarding how the institutional settings should be reformed on a liberal democratic basis. Instead, their claims were largely either empty slogans or a direct imitation of western institutions without any changes.

3. Impacts of nationalism

It is claimed that a strong nationalist nature can be observed from many of the prevailing ideas and thought in the 1980s.[20] The reason for this was the social and economical crisis caused by the CR. The sense of national weakness significantly stimulated nationalism to an unprecedented extent and made the seeking of national greatness many people's priority concern.[21] Meanwhile, the abovementioned sense of authority crisis acted as a bridge linking economic success to a centralised, strong, and conflict free political power; it also claimed political instability to be responsible for national weakness. In the 1980s such a sense was further strengthened by the economic success of the Asian authoritarian regimes (South Korea, Taiwan, and Singapore in particular) where their success was interpreted by many Chinese as the success of a centralised authoritarian politics.[22]

The immediate effect of the rise of nationalism in the 1980s was that for both the believers and 'importers (refers to those people who engaged in introducing foreign ideas)' of foreign intellectual thought, they took the initiative to boycott (although the extent and manner varied accordingly) those foreign ideas that may threaten the intact of a unified, centralised, and strong political power. The social and economic crises seen in Soviet Russia and East European Soviet regimes in the last few years of the 1980s further strengthened the bitter memory of national backwardness and made some people realise that the importation of liberal democratic intellectual thought should not be at the cost of weakening the CPC's firm leadership. The reason for having that idea was

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[20] Andrew J. Nathan and Robert S. Ross, *The Great Wall and the Empty Fortress: China's Search for Security,* (New York: W.W. Norton, 1997). p.34.
[21] Ibid.
[22] Suisheng Zhao, "Chinese Nationalism and Its International Orientations" *Political Science Quarterly,* 115, no. 1 (2000): 1-33; Dingjian Cai, "Singapore's Experience That Has Been Misunderstood (Bei Wudu de Xinjiapo Jinyan)" *Consultative Forum (Xieshang Luntan)*, no. 6 (2006): 36-37; Dingjian Cai, "What Should China Learn from Singapore? (Zhongguo gai xiang xinjiapo Xuexieshenme?)", *Bingdian Weekly Suppliment in China Youth Daily (Zhongguo Qingnian Bao Bingdian Zhoukan)*, 09-11-2005.

because they believed that any radical or wholesale importation of Western political system may fall into the pitfall of the Western 'peaceful evolution ploy' that was believed to aim at containing social economic development in China. The typical example was the rise of new-authoritarianism in the last two years of the 1980s (specific discussion is in chapter nine).

II. Changes of the Marxist intellectual ideas

In the 1980s the fall of Maoist Marxism resulted in two outcomes. The first one was the abovementioned introduction of new ideas; the second one, which will be studied in this section, was the return of orthodox Marxism. This section shows that compared with the remarkable internal and external handicaps the rise of non-Marxist intellectuals encountered, the return of orthodox Marxism was to some extent a movement advocated and led by the authority. At the same time, the nationalist aim of national greatness and its resulting pragmatism added certain liberal democratic factors to the orthodox Marxist tenets.

1. Intellectual and social basis of the orthodox reappearance

The society-wide spread disorder and unrest during the CR gradually removed the halo of Maoist Marxism. Its most commonly seen outcome was not the abovementioned total change of ideologies but the reappearance of orthodox Marxism. As previously mentioned, the intellectual vacancy caused by the fall of Maoist Marxism cannot be properly filled with the imported new thought. Lacking basic knowledge about foreign liberal democratic ideas, embracing orthodox Marxism was the only available alternative for the majority.[23] The most typical example was the urban wall-posters during 1978-1981 (detailed study is in chapter ten).

The return of orthodox Marxism was also the result of the social conditions. A salient example came from the sent-down youngsters[24] who became one of the main forces of

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[23] Scott's research shows a perhaps the most salient example. See James C. Scott, Weapons of the Weak: Everyday Forms of Peasant Resistance, (New Haven: Yale University Press, 1985).p. 340.
[24] The turmoil of 'Red Guard' rebellion during the CR crippled the urban education system, which made 'middle school level' students nowhere to study and unable to graduate (or unable to continue their college level education since universities were also under turmoil). Therefore during 1967-1978 a policy was made by the CPC Central Committee to send those urban youngsters to rural areas. See

the grassroots reformers in the 1980s. Thanks to the relatively loosening social control and extreme hard living condition, the rural life provided young city dwellers with an opportunity to keep far away from official propaganda that imbued the masses with a kind of 'fever'; they thereby had an opportunity to think independently.[25] Meanwhile, rural society's isolated environment prevented them from getting in touch with imported intellectual thought, consequently, confining their thinking in the scope of Marxism. Tsou's 'reverse pyramid of information' offers a perfect model showing this effect of intellectual 'isolation'.[26] According to the model, the information accessibility decreased from the intellectuals to university students to urban dwellers. People in rural area were largely isolated from getting information: those sent-down youngsters got less information than urban dwellers and lacked basic equipment, such as shortwave radio, to receive information from outside China. Such social conditions resulted in an intellectual vacuum that could not have been restored by the imported sources except for orthodox Marxism.

2. Orthodox Marxism reclaimed 'orthodoxy'

The reappearance of the orthodox Marxist tenets in the 1980s was not only observed from grassroots masses; it was also the demands of the authorities. Consequently, two of its tenets were given an ideological 'orthodoxy'. With clear support from public opinion, the 'two whatevers (liangge fanshi)' slogan[27] introduced by Hua, Mao's selected successor and the enforcer of Mao's line, was criticised in 1978; following which, a series of profound changes were launched by the authority. All of these changes bore two themes: downgrading the importance of class struggle and rethinking the CPC's vanguard position.[28]

To be specific, the authority's attempt at redefining the class struggle concept can be witnessed in many perspectives. According to Sullivan, the conceptual differences

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Xueguang Zhou and Liren Hou, "Children of the Cultural Revolution: The State and the Life Course in the People's Republic of China" *American Sociological Review,* 64, no. 1 (1999): 12-36; D. Gordon White, "The Politics of Hsia-Hsiang Youth " *The China Quarterly,* 59 (1974): 491-517.
[25] Zha, *Interviewing the 1980s*. p.16.
[26] Tsou, "The Tiananmen Tragedy: The State-Society Relationship, Choices, and Mechanisms in Historical Perspective."
[27] It claims that "We will resolutely uphold whatever policy decisions Chairman Mao made, and unswervingly follow whatever instructions Chairman Mao gave".
[28] For example, Gordon White, *Riding the Tiger : The Politics of Economic Reform in Post-Mao China,* (Stanford, Calif.: Stanford University Press, 1993). p. 150.

before and after redefining can be illustrated in three indicators (See Table 6). For the new Constitution promulgated in 1982, jurisprudent scholars indicate many clues showing the similarities of the two Constitutions in 1982 and 1954, particularly a similar focus of limiting the range of 'class enemies', which was clearly the result of the decreased importance of class struggle concept.[29]

Table 6: *The class struggle concept before and after 1979*

Indicators	Before 1979	After 1979
Scale	Against exploiting classes as a whole	Against a small number of counter-revolutionaries, new exploiting elements, remnants of the "Gang of Four", and a 'very small' number of remnant elements of the exploiting classes.
Form	On a large scale mass movement	Solved in accordance with state laws
Type	Violent	As the number has decreased, and the scope narrowed, it is relaxed rather than sharp

Source: Michael Sullivan, "The ideology of the Chinese Communist Party since the Third Plenum", in *Chinese Marxism in Flux*. p. 83.

The official-led changes downgrading the importance of the class struggle concept could also be witnessed in the Central CPC documents, resolutions, and the official propaganda. In the bulletin of the Third Plenum in 1978 that heralded the start of the reform, the slogan "*taking class struggle as the key link*" was clearly discarded.[30] The official propaganda system also conveyed to the people a clear message that the majority of conflicts seen in the society belonged to the category of 'inner-class-conflict (refers to non-critical conflicts of people having identical class attribute)' rather than a severe conflict, or even a class struggle, between the inimical classes.[31]

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[29] White, *Communist and Postcommunist Political Systems : An Introduction*. p. 119.

[30] Bulletin of the Third Plenary Session of the 11th CPC Central Committee. See also the '*Resolution on Certain Questions in the History of Our Party since the Founding of the People's Republic of China*', which is one of the CPC's mile-stone resolutions providing an official view of the political history of the Communist China; Ye's opening speech *On the Celebration of the 30th Anniversary of the Founding of the Communist China since 1949*

[31] E.g., Jiang Wu, "Rightly Handling Inner People Conflict Is a General Issue (Zhengque Chuli Renmin neibu maodun shiyige Zongtimu) " *Red Flag,* 2, no. 330 (1979) p.7. Songran Weng, "On Mainland China's Legality on Economy " in *Paper Collection of the Conference on the Research on the Mainland China's Legality (Zhongguo Dalu Jingji Fazhi Pingshu)*, ed. National Chengchi University Chinese Law Research Group, (Taipei: 1989).

3. Pragmatism as the new element

Although the rise of orthodox Marxism since 1978 was generally a process of 'restoration', there was also a new characteristic that was not apparent in the 1950s, that was of a strong pragmatist nature. Generally speaking, pragmatism came from two layers. In the shallower layer was the *spontaneous* pragmatism coming from nationalism. The reason that nationalism may lead to pragmatism was largely due to their inherent linkage: the nationalist aim of national greatness had to be realised by economic success, which could result in the rise of pragmatism. The deeper origination, on the other hand, was from the ruling CPC's *deliberative* use of nationalism as a legitimacy provider.[32]

Both layers required quick economic growth that may encroach on the two Marxist intellectual tenets.[33] To be specific, economic success had its own prerequisites, including free market, harmonious relationship between classes, the allowance of private-owned capital, the allowance of competitions between regions and professions, and the autonomy of the enterprises under less political intervention. All of the prerequisites clearly undermine the two basic Marxist intellectual tenets stressing that the society is based on class diversity and class struggle, as well as the party's leading position and its preclusive control over the society.[34] In matching those prerequisites, some liberal democratic ideas were partially legitimised in the orthodox Marxist discourse (detailed changes are shown in table 7).

III. Intellectual spectrum and the Four Reform Related Groups

This section focuses on the people who participated in the NPC reform by sorting them into four groups and providing each of them with a brief introduction. Based on the above discussion about the intellectual backgrounds of the 1980s, an intellectual

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[32] Longing for new legitimacy sources was the result that the ideological legitimacy was in deep crisis after the CR. Details can be seen in the literature review chapter.

[33] Zhao, "Chinese Nationalism and Its International Orientations".

[34] In discussing the transition of the Chinese Marxism in the 1980s, Dutton and Healy notice that the fall of class struggle concept that gave way to other emphases such as technological advancement was the most significant price paid to the new pragmatist standard of socialism – the advancement of productive force. Michael Dutton and Paul Healy, "Marxist Theory and Socialist Transition: The Construction of an Epistemological Relation," in *Chinese Marxism in Flux, 1978-84*, ed. Bill Brugger, (Armonk, N.Y.: M. E. Sharpe, 1985). pp. 49-50.

spectrum is created, which makes it possible to show accurately the intellectual background of each group by allocating it in a certain range in the spectrum.

1. Key convergence of the 1980s intellectual backgrounds[35]

Based on the studies above, the intellectual backgrounds responsible for the NPC reform can be categorised into two broad categories. On the one hand was the Marxism based intellectual thought that consisted of Orthodox Marxism with its distorted and radical pattern of Maoist Marxism. On the other hand were the liberal democratic intellectual ideas that were based on imported intellectual sources. These ideas have a series of logic start points (e.g. unbalanced political power must go corruption) that directly denied the two Marxist tenets. Meanwhile, pragmatism added several liberal democratic ideas in the two Marxist tenets, whereas nationalism reshaped certain original meanings of the imported liberal democratic ideas by increasing the importance of a centralised, strong, and unified political power, which to some extent gave it certain orthodox Marxism nature. Therefore, an important intellectual convergence was created.

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[35] McCormick stresses that the most basic intellectual change was the rise of Deng's Practise discourse (Based on Deng's most remarkable slogan that "*practise is the sole criteria for truth*") and its replacement of Mao's Vigilant Discourse. Based on which, the two sides, conservative veterans and pragmatist reformers, tried to affiliate their own discourse to the Practise discourse. For example, the conservatives tried to implant into practise discourse the Party's firm control upon society. His finding highlights the "centralising" trend of the different intellectuals in the 1980s and enlightened the author's idea of the so called intellectual convergence. Barrett L. McCormick, "Political Reform in Post-Mao China: Democracy and Due Process in a Leninist State" (Ph.D Thesis, University of Wisconsin at Madison, 1985). pp.151-73.

Table 7: *Two types of intellectual background and the convergence*

orthodox Marxism under the influence of pragmatism	liberal democracy under the influence of nationalism	Convergence of two intellectual backgrounds
Class-based democracy: people belong to inimical class have no right to participate in the politics; <u>however pragmatically reduce the size of the inimical classes to facilitate economic growth</u>	Democratic ideas stressing political participation and transparency;<u> however appreciates a centralised political power with limited participation</u>	A limited allowance to political participation; Gradually open the isolated political system to public access
No conflict within the unitary "people"; <u>however partially admits the justifiability of individual or regional interests</u>	Given justification to individual and regional interests; <u>however requires their sacrifice for the higher and larger interest</u>	Recognition of individual and regional interest and conflict between interests; however still saw country-wide and public interest to be more important
Supervision under the leadership of the CPC as a revolutionary vanguard and the belief of undividable sovereignty; <u>however partially supports bottom-up supervision to reduce corruption or bureaucratism that handicaps the economic development</u>	Checks and balances system; <u>with the prerequisite of not reducing the administrative efficiency</u>	Political power should be examined on a regular basis but cannot be a 'vetoing power (e.g. vetoing a budget plan with the cost of resulting in a fiscal crisis)'
Rule by law: avoid the 'role by an individual' tragedy and return to the orthodox Marxist legal concept of law as the tools of both social administration and class dictatorship; <u>however pragmatically reduce law's dictatorship role for economic success</u>	Rule of law; <u>however not emphasising its meaning of legally constraining political power, which largely turned it into the 'rule by law' concept</u>	Recognition of a legal society largely in a top-down direction

Table by author

Note: The non-underlined contents in the left column show the original ideas of the orthodox Marxism; the underlined contents show how they were partially amended by the pragmatist influence. The non-underlined contents in the central column show the original meanings of liberal democratic ideas; the underlined contents show how they were partially amended by the nationalist influence.

2. Intellectual spectrum

The use of spectrum in political science research has been well established. It perfectly serves to illustrate the nuances of intellectual diversity for its advantages in showing gradual changes rather than a clear-edged qualitative difference. In his categorising of the government types, Austin initiatively allocated the different governments in the democracy-dictatorship spectrum. He did so by firstly fixing two sides of the spectrum by two polarised typical cases and secondly defining several variables by which each of the government could be allocated in the spectrum by considering those variables.[36] Tsou's spectrum of the social-state relationship continuum shows another advantage of using a spectrum: it can be applied to show the overlapping effects from identical origins. According to Tsou, the specific characters of the state-society relationship under the influence of two distinct philosophies of liberalism and totalitarianism may overlap. Although two sets of state-society relationship have distinctive philosophies, the overlaps happen where a totalitarian state shares certain liberalist characters and a liberal state shares certain totalitarian characters.[37] In fact, this template can be easily borrowed to show the diversified intellectual backgrounds in the 1980s China.

Figure 9: *Intellectual spectrum of China in the 1980s*
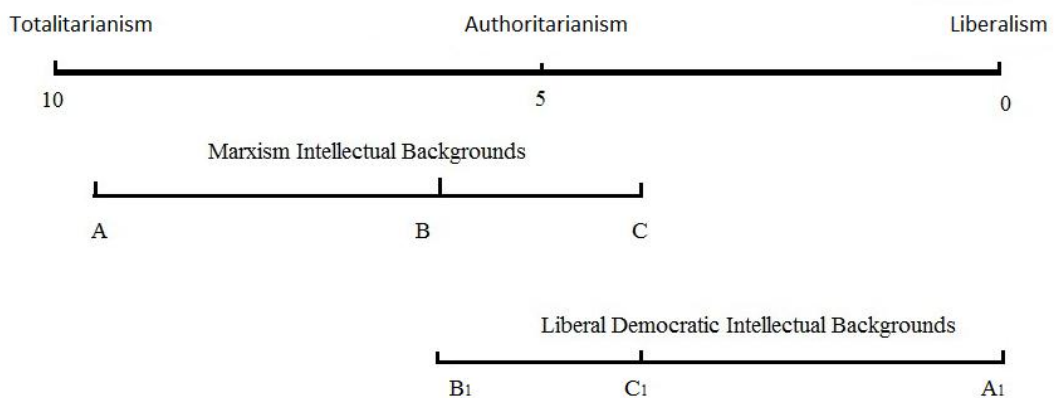
Figure by author

The chart above illustrates generally the intellectual backgrounds of China from 1978 to at least 1989. On the opposite sides were the two polarised situations: totalitarianism and liberalism, which were decided by the four variables – allowance of participation, openness of policy process, centralisation of political power, and intensity of social

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[36] Austin Ranney, *Governing; a Brief Introduction to Political Science,* (New York: Holt, Rinehart and Winston, 1971). p.221.
[37] Tsou, *Twentieth Century Chinese Politics*. p. 228.

control. In this research the totalitarian side meant the party's overwhelming control over other political institutions, party controlled political life, strictly divided and unchanged social strata. On the other side, liberalism meant the negation of the party rule, a thoroughly open policy process, minimised influence of political power on society, and a classless society.[38]

Based on the two sides fixed, the upper strip (From A to C) shows the location of the Marxist intellectual backgrounds in the spectrum. Point A, approaching the totalitarian side, shows the intellectual position of Maoist Marxism. As the spectrum moves generally to the right side, Maoist Marxism gradually returns to orthodox Marxism at the point B. Furthermore, with the influence of the nationalism and its resulting pragmatism, the 1980s saw its further moving toward point C, in which two Marxist principles remained largely a nominal existence. The lower strip shows the location of the liberal democratic intellectuals in the spectrum. The typical effect of the importation of the liberal democratic ideas in the 1980s was at the point C_1, which was in the mid-right of the spectrum. However, the effect of nationalism added several authoritarian essences into it and moved it to B_1. The point A_1 is the polarised form of liberalism that can be seen as anarchism, which was also rarely seen in the 1980s.

Therefore a convergence (BC-B_1C_1) of two non-intersected intellectuals is illustrated in the spectrum; its basic characteristics are listed in the right column of table seven. Moreover, although the precise number is not known, based on the discussion in the above two sections, it is arguable that the number of people holding different intellectual backgrounds would be a bell-shape curve in the spectrum – the largest number of people appeared in the convergent area (BC-B_1C_1) and the number gradually reduced in moving toward two sides.

3. Four Groups

To study legislative institutional changes by *grouping influencers* has not been systematically adopted by pioneering researchers except very few pieces of sections or attempts;[39] instead, most of the legislative research focusing on the NPC prefer to *group*

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[38] The use of term 'liberalism' to show the right pole of the spectrum is based on Tzou's writing. However, It would be more accurate to be replaced by the concept 'anarchism'.
[39] Typical examples are the so called social-political approach; however researches of that type do not directly focus on the NPC institutional change. See literature review chapter.

institutions. The most commonly observed study in point divides the institution into the party Committee, the state council, and the NPC.[40] This thesis believes that only by focusing on the people related to the NPC can the proposed intellectual – institutional linkages be revealed because intellectual ideas cannot exist without being held by individual people.

In this research the criteria of grouping the influencers are not their intellectual similarity but the sociological similarities that include: (1) the position in the stratified society, (2) the role played in the society, and (3) the activities they could and wished to take in fulfilling certain shared aims. These similarities secure that members of each group had largely similar functional demands and preference in designing the corresponding institutions. Furthermore, it is also worth noticing that, as the following four chapters will show, members in each group automatically had a largely similar intellectual position.[41]

There were two broad categories of people who influenced the NPC institutional development because of the rigid insiders-outsiders boundary dividing political participants. The first category was the influencer having power to impose direct impact on the NPC institutional change. The following chapters focus on two specific groups that belonged to this category, which were (1) the power holders and (2) the NPC deputies and staff members.

The second category of influencers was those who attempted to influence the NPC institutional development without having adequate political power. This group of influencers were largely overlooked by pioneering research. The primary strategy they adopted needs an in-depth analysis. Coser's study of the French intelligentsia generalised four strategies that have been normally adopted by those people who stand outside the politics while trying to get in, which are (1) boring from within, (2) legitimising power, (3) criticising power, and (4) seeking social wide salvation.[42]

Borrowed in this research, 'boring from within' refers to a strategy that the influencers attempt to impact legislative development by either capturing political power or

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[40] See, for example, Tanner, *The Politics of Lawmaking in Post-Mao China* p. 48; more examples can be found in the literature review chapter, particularly the review of those attempts at illustrating the structural characteristics of the NPC by modelling the inter-institution relations.

[41] The reason was arguably that the people's intellectual background was largely determined by their social background. For example, the wall posters' disadvantage status in the stratified society made them not possible to get in touch with foreign liberal democratic ideas.

[42] Lewis A. Coser, *Men of Ideas; a Sociologist's View,* (New York: Free Press, 1965). p.138.

influencing the intellectual background of the power holders. 'Legitimising power' is a strategy that an individual or association outside the political system try to influence institutional development by legitimising the existing regime. This attempt may result in their thought being adopted and regarded as part of the orthodoxy. 'Criticising power' refers to a moderate strategy of expressing diversities. People taking this strategy have no wish to openly offend the authority, whereas the 'seeking social wide salvation' strategy is radical. People who took this strategy in the 1980s tried to raise social awareness by which their voice could be heard in a wider range. Meanwhile, social awareness to some extent acted as a shield to prevent persecution. Taking this strategy has two prerequisites: there should be a gathering of grass roots dissatisfaction towards the authority, and people taking this strategy must have, either by using posters or other approaches, sufficient social influence. Naturally, such strategy illustrates the severe tension between the power holders and influencers outside the political system on the matter of institutional design.

Based on Coser's four strategies, the second category of the NPC reform influencers in the 1980s can be divided into two groups. The first group was the intellectual elite, which had two basic characteristics: well educated and politically aware. Goldman's research on China's intellectuals offers a definition.

> *What distinguished this tiny minority from the majority of China's intellectuals was a sense of responsibility to address issues of political policy in a public forum… although they held diverse views and spoke in many voices, their intellectual work had a similar purpose: to point out society's imperfections in order to rectify them. Their operating arenas – academia, journalism, and creative arts were at the periphery of power, but their impact on Chinese politics and power relationships were profound.*[43]

It is worth bearing in mind that at least a part of people in this group had a relatively advanced status in the stratified society, which provided them with a semi-insider nature. A list provided by Goldman showing the occupation and expertise of those intelligentsia illustrates that many people in this group were university lecturers or members of semi-official organisations such as the social science academy or the journalists'

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[43] Merle Goldman, *China's Intellectuals: Advise and Dissent,* (Cambridge, Mass.: Harvard University Press, 1981). p. 2.

association.[44] Such positions made the individuals of this group tempted to adopt the 'boring from inside' and 'legitimising power' strategy.

In contrast, the grassroots reformers, another group in this category, had the most significant characteristic of its members' sociologically disadvantaged status. They normally had insufficient authority to influence the institutional change by the methods normally adopted by the intellectual elite. Therefore the most commonly seen strategies they applied in the 1980s were 'criticising power' and even more radical 'seeking social salvation' (a specific introduction to their social and intellectual background is in chapter ten).

Conclusion

This chapter focused on the intellectual changes that happened after 1978 – namely the rise of the liberal democratic intellectual background, the revival of orthodox Marxism, and nationalism that created an intellectual convergence by adding new components in the original meanings of the two distinct intellectual backgrounds. A spectrum was therefore established to illustrate their relationship.

The chapter then shifted the focus to the people influencing the legislative institutional development. According to their role and position in the society, as well as the strategies they took, the influencers were grouped into four. On the basis of the intellectual spectrum and the division of four groups of influencers, the subsequent four chapters, from the intellectual perspective, will specifically focus on each of the groups respectively.

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[44] "Major Intellectual groups and their political patrons", in Merle Goldman, *China's Intellectual: Advise and Dissent,* (Cambridge, Mass.: Harvard University Press, 1981). Appendix.

Chapter 7. Power Holders

Introduction

As the review chapter shows, the default view of previous research regarded the power holders as the fundamental, if not the only, director and driving force of the 1980s Chinese legislative reforms. However, previous research paid too much attention to the structural matters and the resulting functional characteristics. Therefore, they normally held an oversimplified belief that the power holders engaged in the legislative reform with the demands for economic growth and a limited extent of institutionalisation to fill up the waning ideological legitimacy and to prevent any individual to obtain prerogative political power. Such an interpretation, although cannot be said to be incorrect, did not solidly identify the specific function demands and institutional designs this group of people had; it was also weak in describing how the thinking of the power holders shaped such demands and designs.

This chapter aims to provide a new interpretation with greater explanatory capacity by taking the intellectual perspective that highlights the influencer's intellectual background and its corresponding institutional outcome. This chapter firstly illustrates the intellectual background of the power holders. Secondly, each of the four functions and the corresponding institutional designs are examined to illustrate how intellectual ideas of the power holders shaped their specific functional demands and institutional designs.

I. The People and the Intellectual Background

Regarding the social and intellectual background of the power holders, existing literature normally highlights two types of separations, which (1) see the CPC and the NPC as separate institutions and try to reveal the inter-institution structural relations, and (2) stress the separation and conflicts between the conservative power holders and reformative power holders. Based on the subsequent analysis, this section claims that the above mentioned separations were not influential variables, which in turn shows the importance to study the power holders' functional demands and institutional designs from the intellectual perspective.

1. Outline of the people and the post

According to the brief introduction in chapter six, this group of influencers refers to a very limited number of people who stayed at the top of the hierarchical power pyramid, also known as the *nomenclatural system* in communist regimes. One basic characteristics, the power holders, although having various posts, had automatically the dual role as both party leaders and leaders of the political institutions. A list of power holders having close linkage to the NPC reform can be identified based on the previous research.

Table 8: *The dual post of the NPC reform related power holders*

Name	Intra-Party Post (Period of tenure)	Post in the Institutions of the State (Period of tenure)
Bo Yibo	Vice director, CPC Central Advisory Commission (1982-1992)	Vice director, National Commission for Economic Reform (1982-)
Chen Pixian	Director, CPC Central Political-Legal Affairs Commission (1982-1985)	Vice chairman, NPCSC (1983-1987)
Chen Yun	Director, CPC Central Advisory Commission (1987-1992)	Director, Central Government Committee of Fiscal and Economy (1980-)
Deng Xiaoping	Director, CPC Central Military Commission (1981-1989) Director, CPC Central Advisory Commission (1982-1987)	
Hu Qiaomu	Secretary General of the Central Committee of the CPC (1980-1987) Member, CPC Central Advisory Commission (1987-1992)	Dean, Chinese Academy of Social Science (1977-1982)
Hu Yaobang	CPC President (1981-1987)	
Peng Zhen	Director, CPC Central Political-Legal Affairs Commission (1980-1982)	Vice chairman, NPCSC; Chairman, NPC Law Committee (1979-1983) Chairman, NPCSC (1983-1988)
Qiao Shi	Director, CPC Central Political-Legal Affairs Commission (1985-1992)	Chairman, NPCSC (1993-1998)
Wan Li	Secretary General of the CPC Central Committee (1980-1987)	Chairman, NPCSC (1988-1993)
Zhao Ziyang	CPC President (1987-1989)	Premier (1980-1987)

Source: People selected by author, information based on the CPC website: (http://cpc.people.com.cn/GB/69112/index.html)

Besides their formal posts, the informal but rigidly followed 'intra-party division of labour' also allocated them an area of responsibility. Peng Zhen,[1] Wan li, and Qiao Shi were the heads of the political legal affairs commission, that was an intra-party organisation responsible for guiding and supervising the political-legal affairs, including the related works of the NPC. Such intra-party posts were echoed by their non-party post of the director of the NPCSC. Bo Yibo and Chen Yun can be largely seen as the directors of economic affairs. This role was identified not only by their posts in the central government, but also, more importantly, by their intra-party post in the Central Advisory Commission (Zhong gu wei).[2] Compared to those revolutionary veterans, Hu Yaobang and Zhao Ziyang were the cadres of younger generation and were selected by Deng to be one of the very few people consisting of China's core leadership because of their much open attitude to reforms. Specifically, Hu Yaobang was the practitioner of Deng's idea of loosening the Marxist ideological censorship; Zhao Ziyang owned a group of think-tank on economy that had the task of putting into practice Deng's many guiding principles of economic reform.

Standing on the top of the hierarchical power pyramid was Deng. In the 1980s he was the arbiter among the power holders although he had neither a formal intra- party post nor a governmental post. This meant that the outcome of any factional struggle among the power holders, if it existed, was largely determined by Deng's attitude. To cite the rhetoric of Pye, Deng played a role as a *"behind-the-scene-manipulator"*.[3] A survey of RMRB index shows that Deng seldom gave any instructions regarding any specific institutional development, including the PCs.[4]

In general, the above discussion illustrates the existence of at least four types of power holders in relation to the social-political reform of the 1980s: (1) Deng as the arbiter of the power holders and the maker of the guiding principles of the reform; (2) monitors and policy makers of the economic related organisations; (3) monitors of the ideological

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[1] This chapter uses full name of the power holders (family name in first) because several people have a similar family name.

[2] Being an informal organisation having immense power, the Central Advisory Commission was established for the retired veterans to continuously grasp power after relinquishing all of their formal posts for age reasons.

[3] Lucian W. Pye, "Deng Xiaoping and China's Political Culture," in *Deng Xiaoping : Portrait of a Chinese Statesman*, ed. David L. Shambaugh, (Oxford: Clarendon Press, 1995). pp. 4-35.

[4] A survey of RMRB index is made by author. The survey combines key words of "Deng" and "renda (abbreviation of the People's Congress)" or "renmin daibiao dahui (the People's Congress)". Result suggests that within the whole period this thesis focuses, Deng carefully avoided expressing any view regarding specific institutional developments of the PCs. The only observable exceptions were (1) articles showing Deng participated in the local level legislative elections; (2) many of his emphases on strengthening democracy and the legal system.

related organisations and works; (4) monitors and policy makers of the political and legal affairs. The power holders of the second, third, and the fourth type were the head of intra-party 'mouths (Kou)'. By the mouth-system (Xitong) linkage,[5] the power holders had control over different areas of political institutions (see figure 10).

Figure 10: *The Mouth-System linkage*
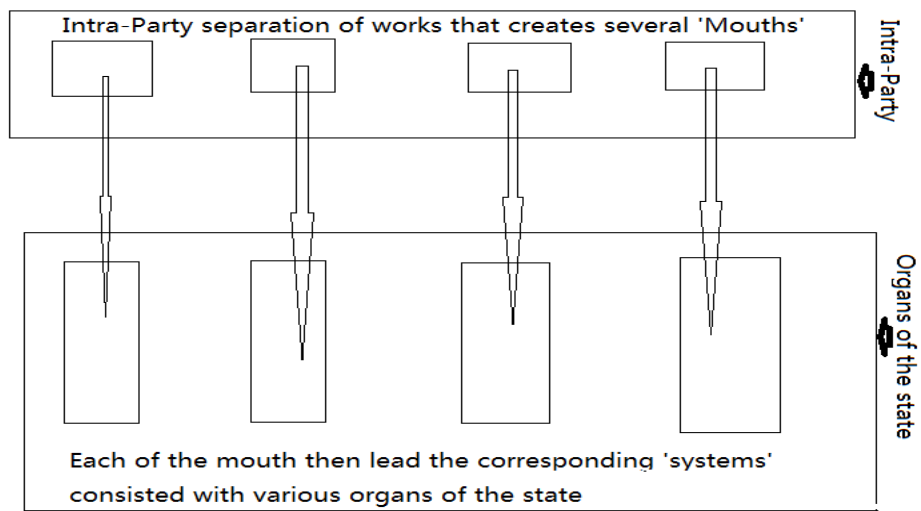
An example of the Mouth-System linkage:
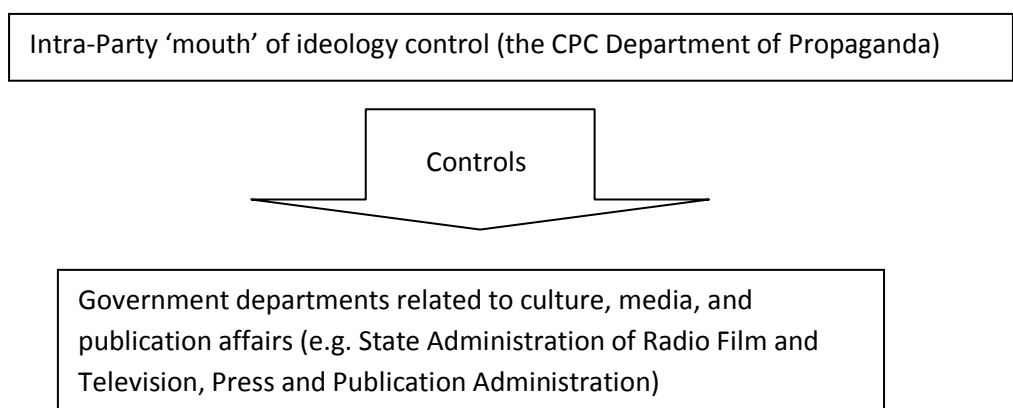
Figure by author

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[5] According to the explanation offered by Liberthal and Oksenberg, "Xitong in essence refers to the vertical functional hierarchies; they stretch from Beijing to the local units. Each central ministry or state council commission heads its own xitong" quoted in Lieberthal and Oksenberg, *Policy Making in China : Leaders, Structures, and Processes*. p. 141. The relationship between Deng, head of the 'mouths', and the systems of the organs of the state can be seen also in Ezra F. Vogel, *Deng Xiaoping and the Transformation of China*, (Cambridge, Mass.: Harvard University Press, 2011). p. 381.

The NPC institutions belong to the political-legal affairs 'mouth-system', and the above listed power holders leading the Political Legal Affairs Commission or (and) the NPCSC were the most important influencers in this area. It is crucial to point out that although the intra-party division of labour and the mouth system was not confirmed by any of the written documents, it was the power holders' 'basic survival skill' to completely understand and follow it. Any trespassing, particularly interfering, of the specific works of other mouths, was rigidly avoided.[6]

2. Orthodox Marxism as a shared intellectual background

Many pieces of pioneering research focusing on factional conflict highlighted the fact that Mao's death ended the factional conflict based on personal loyalty and opened the conflict based on ideological diversities.[7] Therefore, this research intends to evaluate whether the intellectual diversity among the power holders was significant enough to be called a factional conflict. If so, this chapter also intends to adopt a bifurcated structure that discusses both sides as well as evaluate the effects of their conflicts. If not, the research should reveal the intellectual idea that was shared by all power holders.

Standing on the top of the hierarchical system, Deng's intellectual idea was a crucial factor in determining that of other power holders. This research argues that despite his pendulous attitude to reforms,[8] he was a strong believer in orthodox Marxism. Moreover, measured by the intellectual spectrum, Deng's idea could be located in point C, which meant that on the one hand, he tolerated many reformative ideas and practices that did not challenge the boundary of orthodox Marxism's basic tenets. On the other hand, Deng tirelessly warned those power holders to be vigilant against the bourgeois conspiracies of using the reform to subvert the people's democratic dictatorship. Many liberal democratic ideas were also banned in the name of eliminating the bourgeois

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[6] Interestingly, the author's observation on RMRB shows that before being selected to be the director of the NPCSC, there was no article in the newspaper showing Wan Li had said anything about the development of the PCs; however, after holding that post, related articles suddenly became ubiquitous. In another example, even Hu Yaobang, the Party president, was seldom giving any specific attitude regarding the works of the political legal affairs 'mouth'. An example can be seen from Hongquan Sun, "The Last Conversation (Zuihou De Jiaotan)," in *In Memery of Yaobang (Huainian Yaobang)*, ed. Liqun Zhang, et al., (Hongkong: Lingtian Press, 1999). pp. 285-95.
[7] Shaoguang Wang, *Failure of Charisma: The Cultural Revolution in Wuhan,* (Hong Kong; New York: Oxford University Press, 1995). pp. 268-77.
[8] A detailed introduction to the pendulous attitude can be seen in the third type of ideological conflict in chapter two.

conspiracy.[9] Primary evidence also confirms Deng's strong belief in the orthodox, but not radicalised, vanguard consciousness. The reason for this was because he believed that the CR was caused by the party's leadership being damaged by the Maoist Marxist's advocacy of 'gross democracy' that nullified the party leadership.[10]

Below Deng, were the power holders who were the head of various 'mouth-systems'. It is undeniable that in the 1980s certain power holders had a stronger wish to reform politics, while others were more conservative. For example, Hu Yaobang was openly denounced by Bo Yibo for showing too much 'mercy' to the student pro-democracy movement and was forced to resign. Both Hu and Zhao were removed from their post for holding an 'ambiguous' attitude to 'bourgeois democracy'. On the other side of the spectrum, as the general director for economic affairs, Chen Yun in the 1980s brought forward the well-known 'bird cage' theory, stressing that private owned economy must be confined in the cage of rigid state control, which illustrates his zealous approach to guarding the basic Marxist doctrines. Hu Qiaomu was called by the pro-democracy intellectuals as the commander in chief of ideological control. Deng Liqun, the director of the CPC's Propaganda Department, was denounced to be the 'leftist king (Zuo Wang)',[11] and was removed from the post in 1987 for being too conservative.

However, as subsequent study shows, no matter how 'liberal' or 'conservative' he power holders were, they had no intellectual ideas that belonged not to orthodox Marxism. In general, as chapter six has partly mentioned, the reason for orthodox Marxism being the power holders' consensus was the CPC's legitimacy crisis during the CR period. This crisis forced the CPC leaders to deliberately avoid any severe factional conflict that would worsen the crisis.[12] For example, Hu Qiaomu, normally

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[9] Articles of this kind can be seen almost everywhere in Deng's selected writings. See Xiaoping Deng, *Selected Writings of Deng Xiaoping Vol.2 (Deng xiaoping wenxuan),* (Beijing: People's Press, 1994). Esp. pp. 158-84, 239-73; Xiaoping Deng, *Selected Writings of Deng Xiaoping, Vol.3 (Deng Xiaoping wenxuan),* (Beijing: People's Press, 1993). Passim.

[10] See Xiaoping Deng, "Take a Clear-Cut Stand against Bourgeois Liberalisation (Qizhi Xianming Di Fandui Zichan Jieji Ziyouhua)," in *Building the Socialism with Chinese Characteristics (Jianshe you zhongguo tese de shehuizhuyi)* ed. Deng Xiaoping, (Beijing: People's Press, 1987). Vogel's study of Deng's guidelines for governing illustrates that Deng was a leader who was over-sensitive about the separation of the leading authority and a society lacking a nucleus. See Vogel, *Deng Xiaoping and the Transformation of China.* p. 389.

[11] 'Leftist' in the discourse of Chinese politics means those who conservatively adhere to the Marxist doctrines.

[12] There is a simple but popular metaphor, which assimilates the post-Mao power holders to the crews of a sinking ship that would sink into water if they kept busy engaging in power struggle and rejected to collaboratively save the ship. This metaphor, in much academic language, can be contextualised into the claim that it is valueless to discuss whether the power holders were the true believers of Marxism. As Chen claims, they have no other choice but to guard the righteousness of

known as a typical conservative, conducted the movement and drafted the resolution against Maoist Marxism. His articles clearly attributed to the CR tragedy towards "*the institutional deficiency that resulted in a regime and party lacking democracy.*"[13] The 'leftist king' Deng Liqun also castigated the CR lawless society and the violence by comparing those who indulged in using lawless violence to *"feeding by wolf milk"*.[14] Similarly, even Hu Yaobang and Zhao Ziyang, the two typical 'open-minded' power holders, did not challenge the consciousness shared by the power holders that the Maoist tragedy was caused by certain power holders distorting the orthodox Marxist tenets, and not by the abnormal and weak institutional designs that resulted from the tenets.[15]

In the same vein was the intellectual background of the power holders of the legal political 'mouth-system' who were most closely linked to the NPC reform. For Peng Zhen, Wan li, and Qiao Shi, a noticeable thing was that they had neither placed high hopes on the masses to make any substantial reforms, nor had they been denounced to be leftist. More importantly, they were not removed from their posts regardless of their policy preference going beyond what might have been considered tolerable boundary. These facts further consolidate the basic argument of this research that in the 1980s they were moderate orthodox Marxists. The word 'moderate' in this sense, means that on the one hand, for pragmatic reasons, they actively advocated, designed, and supported many reforms in political legal affairs. Furthermore, they even tolerated certain attempts that might challenge the Marxist tenets, including the growing number of independent non-CPC based candidates in the LPC elections (see chapter ten). However, on the other hand, they were very rigid in containing any attempts to reform the NPC by borrowing the designs of the non-Marxist institutions.

3. Factional conflict as a non-significant variable in the NPC reform

The above two sections highlighted the uniformity between the power holders' intellectual background, which partially justified the argument that factional conflict

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Marxist doctrines if they want to continue the monopolised ruling of the CPC. An Chen, *Democratic Experimentation under Party Dictatorship,* (Ph.D Thesis: Yale University, 1993). p. 7.

[13] Qiaomu Hu, "Why China Ran in the Leftist Wrong Path for Twenty Years (Zhongguo weishenme fan ershi nian zuo de cuowu) " *Xinhua Digest*, no. 9 (25-09-1992): 10-12. This article is Hu's speech made in California Institute of Technology in March, 1989.

[14] Deng's speech in the May Fourth Memorial Colloquium in May, 1979.

[15] For example, "Zhao on China's price reform", in *BR*, Vol.31, No.38, 09-25-1988, p. 6.

was not a significant variable in the study of the power holders' role in the political reform.

There was another crucial reason for the non-significance of factional conflict. The struggle between the power holders, although fierce at times, happened primarily in the area of ideology and economy (see figure 11).[16] The influence of those struggles on the political legal 'mouth-system' was not remarkable because 'mouth-systems' were mutually isolated. Therefore, in revealing the role of the power holders in the 1980s NPC reform, it is reasonable not to take factional struggles between the power holders as a key variable, but to focus primarily on the political attitude of Deng and other power holders of the political legal 'mouth-system'.

Figure 11: *Two primary struggles between the power holders*
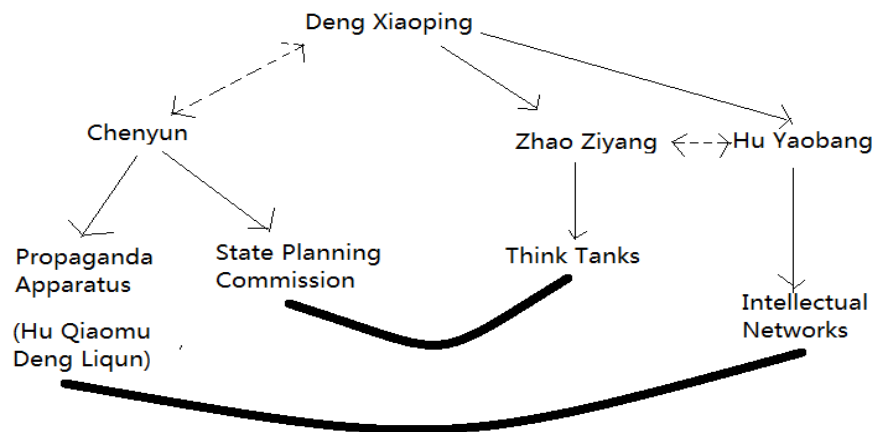
Source: Based on Joseph Fewsmith, *Elite Politics in Contemporary China*, (Armonk, N.Y.: M.E. Sharpe, 2001), p. 50. Some changes, including the two bold lines, are made by author.

Note: The people and organisations on the left side (fig. 11) were those known to be 'conservative lefts'. Whereas, the people and organisations on the right side were normally known to be reform pioneers. The upper bold line illustrates the struggle in the economic affairs; the lower bold line illustrates the struggle in the ideological affairs.

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[16] For more primary evidence, see Ziyang Zhao, *Prisoner of the State,* (London: Pocket Books, 2010). Part 3, esp. 119-24; part 4, esp., pp. 161-63, 179-80.

II. Decision Making

According to the indicators stipulated in the methodology chapter of this thesis, this section reveals that in the 1980s the NPC's decision-making function underwent a rapid improvement; however, only certain aspects of this function were emphasised; the re-emergence of the 'rule by law' consciousness was responsible for this imbalanced redevelopment.

1. The return of the rule by law consciousness

The raise of the 'rule by law' consciousness is important for the study of this section. Its rise relied on two of its believers' acknowledgements. In one aspect was Unger's second type of legal concept respecting law as an instrument of social administration rather than a means of protecting individual rights, which prevented the 'rule by law' consciousness from developing into the 'rule of law' consciousness. In another aspect, a belief was required that no longer saw conflicts between classes as an influential factor, or even the theme of the political life. Such a belief prevented the abuse of lawless violence under the camouflage of legal order, which might have finally resulted in either a lawless anarchical society or the rise of dictatorship (or both).

For Deng and other power holders directly linked to the NPC reform, pioneering research illustrates that the pragmatism, particularly the pragmatic legal concept, were the shared consciousness of the power holders. Such consciousness, according to Yu's research, had four characteristics: (1) overemphasising the instrumental nature of law; (2) seeing laws as an outcome of actuality; (3) treating laws as servant of policy; (4) overlooking individual legal rights. [17] This research highlights two of its resulting characteristics. Firstly, as regards to the law-making function, they did not think that law-making was a process of artificially perfecting reasons and a process requiring long time and specialised training, but was a process of expediently responding to practical issues. [18] This characteristic directly clashed with the legal concept in most of the

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[17] Yu, "Legal Pragmatism in the People's Republic of China".

[18] Ibid; for additional evidence, see Shi Qiao, "New Situation and New Issues of the Political-Legal Works Are Worth Researching and Should Be Addressed " in *Qiao Shi on Democracy and Legal Works (Qiaoshi Tan Minzhu Yu Fazhi)*, ed. Qiao Shi, (Beijing: People's press, 2012). pp. 8-13. Zhen Peng, Speech delivered at the symposium of Civil Law (27-05-1981). In *Selected Writings of Pengzhen*, pp. 421-24. "Wan li emphasised in the NPCSC that the second plenary session of the seventh NPC should be a meeting enhancing people's confidence (wanly zai quanguo renda

Western liberal democratic regimes, particularly those countries having a Common Law tradition that originated from Coke.[19] Secondly, having a strong linkage to the vanguard consciousness, the law-making process was known as a task that only those people having higher intellectual standard could engage. Similarly, the masses were expected to obey the established legal regulations, rather than participating in the making of those regulations.[20] The influence of this belief was more remarkably observed in the power holders' understanding of the assent-giving function: although Deng and other power holders did not openly express their discouragement for the NPC to have its own opinion (which can be contextualised to their discouragement for the NPC to have a 'high viscosity'), examples can be found in the compilations of power holders' speech showing that they were very sensitive to the masses' own opinion that differed from that of the power holders'.[21]

At the same time, with a sharp decline of Maoist Marxism after the end of the CR, reducing the importance of class struggle in political life, another prerequisite of the re-dominance of the rule by law consciousness, clearly turned out to be a consensus among the power holders. In some cases, the power holders one-sidedly stressed the fairness and ubiquitous characteristic of the law-making process.[22] The fall of the class-based legal concept was also pushed forward by the power holders' pragmatic demands for economic growth and other pragmatic purposes, such as uprising localism and giving more power to local authorities. As legal scholars show, the transformation of the legal concept from class-based to universal and classless is essential to fulfil those pragmatic demands.[23]

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changweihui shang qiangdiao renda erci hui yao kaicheng zengqiang xinxin de hui)", in *RMRB* (12-03-1989).

[19] See James R. Stoner, *Common Law and Liberal Theory: Coke, Hobbes, and the Origins of American Constitutionalism,* (Lawrence: University Press of Kansas, 1992). p. 23.

[20] As a salient example, Peng's speech stresses that the aim of perfecting the legal system is to "provide nine hundred million people with regulations in doing everything," and "constraining and punishing evil doers". Zhen Peng, "Descriptions regarding the seven law drafts", Speech in the second plenary session of the fifth NPC (26-06-1979), cites in Reseach Section of the NPCSC General Office, *Documentary Compilation of the People's Congress System (1949-1990).* pp. 161-63.

[21] See, for example, Deng, "Take a Clear-Cut Stand against Bourgeois Liberalisation (Qizhi Xianming Di Fandui Zichan Jieji Ziyouhua)."

[22] See the guiding slogan "*There must be laws to go by, the laws must be observed and strictly enforced, and lawbreakers must be prosecuted (Youfakeyi, youfabiyi, zhifabiyan, weifabijiu)*" that was initially introduced in the vitally crucial Third Plenum Party Conference in December, 1978.

[23] See Stanley Lubman, *Bird in a Cage: Legal Reform in China after Mao,* (Stanford, Calif.: Stanford University Press, 1999). pp. 130-31; Pitman B. Potter, "Curbing the Party: Peng Zhen and Chinese Legal Culture " *Problems of Post-Communism,* 45, no. 3 (1998): 17-28; Potter, "Review: Legal Reform in China: Institutions, Culture, and Selective Adaptation "; Cheng Li and David Bachman, "Localism, Elitism, and Immobilism: Elite Formation and Social Change in Post-Mao

Those characteristics resulted in the power holders' demand for certain aspects of the decision making functions while ignoring other aspects, which resulted in an imbalanced development of the corresponding institutions. Specifically, (1) they allowed more space to the decision making related institutional innovations that may facilitate their pragmatic aims despite challenging the orthodox Marxist tenets. (2) The development of certain aspects of the decision making function and institutional designs that did not conflict with the orthodox Marxist tenets were to some extent encouraged by the power holders. Correspondingly, (3) some functions and institutional designs had more difficulty to be developed as they neither facilitated the power holders' pragmatic aims nor strictly complied with the orthodox Marxist tenets. This point must be highlighted because it was directly responsible for the power holders' lack of wish to democratise the decision-making process, including both the law-making process and the assent-giving process.

2. The law-making function in the intellectual perspective[24]

(1) Functional demands

During the 1980s, the sharp increase in the quantity and quality of laws made by the NPC was perhaps the most widely mentioned aspects of the NPC functional development. Based on the statistics shown below, this research highlights its imbalance nature, which can be explained by taking an intellectual perspective.

Table 9: *Number and proportion of the NPC law-making during the reform period*

Number

Period	Total	Constitution and related	Civil and Commercial	Administrative	Economic	Social	Criminal	Procedural
1978-1982	22	7	3	6	2	2	1	1
1983-1992	70	16	9	19	18	5	0	3

China " *World Politics,* 42, no. 1 (1989): 64-94.

[24] Some contents of this part are developed from the author's previous paper "One step ahead: functional expansion and the development of Chinese legislature", (PhD Legislative Studies Conference, University of Hull, 2011).

Proportion
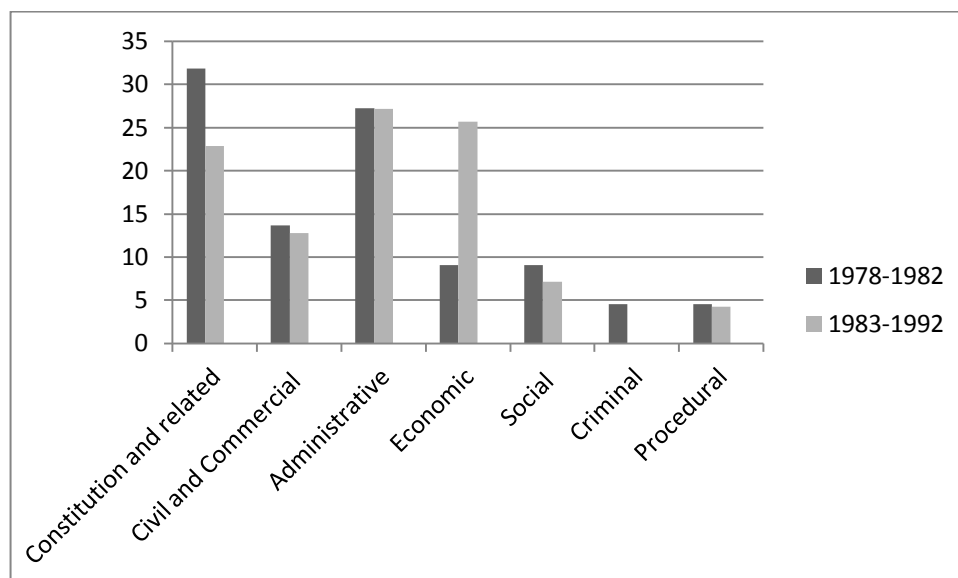
Source: Lin Li, "Xin zhongguo lifa liushi nian (Sixty years of new China's law making)" Lin Li (ed.), *Xinzhongguo Fazhi Jianshe Yu Faxue Fazhan 60 Nian (The 60th anniversary of the rule of law and legal studies in new China),* (Beijing: Social science academy press, 2010). pp. 7-19.

As the column chart shows, in the early stage of the post-Mao period, Constitution and related laws were the NPC's primary concern. The second largest concern during this period was the administrative legislation; whereas in the period from 1983 to 1992, the Constitution and related legislation became the third largest concern. The administrative legislation retained its importance in the NPC's legislative work. The most noticeable change over this period was the sharp increase in the proportion of the economic related laws: more than a quarter of the promulgated laws fall in this category. Simultaneously, the procedural legislation was overlooked in both periods.

Regarding the NPC's changing focuses of making different types of laws between the two periods, O'Brien's explanation is notable. Although departing from the structural perspective, his research reveals that the NPC's change of focus came partially from the changes of the concern of the Chinese leadership. It was mostly focusing on dispelling lingering fears and to mobilise society for modernisation in the early post-Mao period and then focusing on social and economic administration since the middle of the 1980s.[25] Furthermore, based on O'Brien's claim, it is worth stressing that the underlying logic of the power holders' changed focus was the constant rule by law concept. This point is crucial because it explains the popularity of the Constitution and related

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[25] O'Brien, *Reform without Liberalization*. p. 158.

legislation before 1982 as well as the popularity of the making of the economic related laws during 1983-1992. It also explains the reason as to why criminal and procedural legislation was not focused. These two types of legislation had no direct and immediate effect on facilitating economic development. Compared to the legislation in other areas, criminal related legislation directly prevented the regime from abusing its power in crushing the dissidents, thus hampered the power holder's freely use of political power. Similarly, procedural related legislation that establishes formal procedures to regularise the use of political power was also less focused.

It is crucial to note that the power holders were largely responsible for the fast but imbalanced development of the law-making function. Quantitatively, primary evidence, including conference speeches and writing documents, shows that the power holders were always the precipitator of that function. Immediately following the 'Third Plenum' that highlighted the importance of rebuild the legal system, the NPC of 1979 emphasised that "*the work of improving the socialist legal system is now high on the agenda of the Standing Committee of the NPC*"; Ye Jianying, chairman of the NPCSC, also urged the Standing Committee to increase the efficiency of the law-making process.[26] Peng Zhen was never tired of stressing the importance of law-making; particularly the economic related legislation.[27] Qualitatively, the power holders clearly supported an increase in the law-making power that would facilitate the pragmatic aims, despite challenging the orthodox Marxist tenets. The salient examples were the making of the Enterprise Bankrupcy Law and the State-owned Industrial Enterprise Law. The making of both laws faced intensive debates as they challenged the Marxist economic doctrines to a greater extent. However, the power holders strongly advocated and played a vital role in their promulgation.[28] In sharp contrast, the making of the Law of Press and the Administrative Litigation Law (ALL) witnessed many hindrances. The making of the Law of Press was advocated by many reform activists including Hu Jiwei, a NPCSC deputy during 1983-1990. However, lacking support from the power holders, the legislative process was finally aborted due to severe interruptions by Hu Qiaomu who was the director of the 'mouth-system' of ideological control.[29] The ALL is a

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[26] "Speeding the work of law-making", in *BR*, Vol. 22, No. 9, (02-03-1979) P. 3-4.

[27] Rufen Song, "Recalling Comrade Peng's Several Attempts at Strengthening the Economic Related Law-Making (Huiyi pengzhen tongzhi zhua jingji lifa er san shi) " *Journal of the People's Congress of China (Zhongguo Renda)*, no. 7 (2004): 52-53.

[28] Examples can be found in Tanner, *The Politics of Lawmaking in Post-Mao China* Part III.

[29] Jiwei Hu, "Hardships and Dooms of the Making of China's First Press Law (zhiding zhongguo diyibu xinwenfa de jianxin yu eyun)", http://www.xys.org/xys/ebooks/others/history/contemporary/hujiwei/

procedural law playing a crucial role in preventing the rise of an autocratic administrative power and institutionally allowing 'the masses to sue authority'. Although the drafting of the 'ALL' also faced many antagonists, it received the power holders' partial buttress.[30] The reason for this is arguably that despite its potential threatening to the CPC's political power, it not only echoed the power holders' demands for preventing the abuse of administrative power and stop the worsening situation of corruption, but was also without direct conflict with the party's vanguard post.[31]

(2) Institutional designs

The growing demand for the NPC's law-making function stimulated the developments of its corresponding institutions. Its immediate expression was an increase in the number of law-making related staff, as well as the qualitative and quantitative improvements of the related committees. For example, the most crucial law-making body of the NPCSC, that of the Legislative Affairs Commission, was built on the basis of the former Legislative Commission in 1983. The same year also witnessed the founding of the NPC Law Committee, which was, and still is, a special committee created to strengthen law-making process. Besides strengthening its own institutions, the NPC tried to develop certain institutions by which legal experts not sitting in the NPC law-making system could be given opportunity to participate in the process. Such an effort included the establishment of the 'law-making forum', in which many distinguished legal experts were invited.[32]

Besides the intra-NPC changes, the power holders who were simultaneously the party leaders gradually released the party's control over the NPC's law-making process;

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xinwenfa1.txt, (accessed 19-09-2012).

[30] 'Partial buttress' is difficult to define, but can be understood by many primary sources. According to *RMRB*, the power holders neither directly supported the ALL nor expressed any negative attitude toward the ALL, which can be seen as a 'tacit permission.' As many RMRB correspondence or interviewing articles show, under that 'tacit permission' were many active works done by NPC staff members and legal scholars with or without official background; their work pushed forward the making of the ALL. For primary evidence, see "the ALL drafting is speeding up, NPCSC Legal Affairs Commission invites certain people in Beijing to attend a drafting symposium", in *RMRB* (12-08-1988); "Panic before the birth of the ALL: debates during the drafting of the ALL", in *RMRB* (30-03-1989); "China law society holds a conference in Beijing, ALL draft was discussed and more than sixty recommendations were made", in *RMRB* (20-12-1988).

[31] Interview, 03-11-2011.

[32] For related discussion, see Zeldin Wendy I. Hsia Taotai, "Recent Legal Develoipments in the People's Republic of China " *Harvard International Law Journal,* 28, no. 2 (1987): 249-87. For primary evidence, see, for example, "Pengzhen says in the symposium of the drafting Civil Law that law-making work should stick to the principle of linking theory and practice; the process should be centralised without reducing democracy (Pengzhen zai minfa tongze caoan zuotanhui shang shuo lifagongzuo yao jianchi lilun lianxi shiji, zai gaodu minzhu de jichushang gaodu jizhong)", in *RMRB* (05-12-1985).

thereby, the NPC was given more space to develop its institutions. Such a change, according to Tanner, was a theme for the authority-led NPC related political reform in the 1980s, by which the role of the CPC in the law-making process shifted from an initiator to reviewer.[33] Similarly, this change made the NPC more likely to be a 'law-making arena', in which legislative debate was encouraged. More importantly, the debate gradually turned to be not only a superficial show, but also a real bargaining between different interests.

As previously mentioned, the 'rule by law' consciousness resulted in the power holders to have imbalanced demands for the law-making function: seeing laws as an instrument of administration led to their lack of wish to protect basic human rights and confine the arbitrary political power by making laws. Its corresponding institutional outcome was that, according to the indicators in chapter three, the power holders did not attempt to make any institutional change to address the following two flaws.

Widely mentioned by previous research, the first flaw was that the making of the annual law-making plan (a schedule listing all proposed new laws that is to be made in the coming year) was largely determined by the government.[34] The interviews further confirmed that without feeling inappropriate, the legislature largely volunteered to respond to those demands of the government in drafting the law-making plan.[35] Peng's annual NPCSC working report during his tenure in the 1980s always deemed the 'making of new laws according to the administrative demands' as a laudable and appreciable thing. More salient while normally ignored evidence was that Deng and other power holders' policy guidelines were deemed to be guiding principles in the making of the law-making plan. The 'Explanation for the Drafting Law-making Plan of the Eighth NPCSC' is a salient example: it *"puts the party's aim of building the socialist market economy, and the NPCSC Director Qiao's specific speeches stressing the economy-related legislation"* as the guiding principle of the plan. In echoing those guidelines, it stressed that the making of the plan should set the actual demands of the

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[33] Tanner, *The Politics of Lawmaking in Post-Mao China* . pp. 52, 66.
[34] See, for example, Li Wan, "Developing Democracy and Perfecting Legal System Is a Fundamental Task " in *Wan Li on the Development of People's Democracy and Legal System (Wanli Lun Renmin Minzhu Fazhi Jianshe)*, ed. The NPCSC General Office editoral group of Wan's writings, (Beijing: Democracy and legal press, 1996).
[35] Interview, 18-10-2011.

social economic reform as its start point, and put the economy-related legislation as a top priority.[36]

In the same vein, a lack of institutional innovations aimed at democratising the law-making process can be observed. The NPC Organisation Law gave NPC deputies a high admittance requirement to initiate a PMB of making new laws, particularly after the amendments to the private bills regulation in 1983.[37] Simultaneously, law-making by civil initiation, with no corresponding institutional path, was institutionally impossible and empirically not observable.

A widely seen delegating legislation was the second institutional flaw.[38] In the 1980s, the influence of this idea was illustrated by two characteristics: firstly, because law drafts lacked substantial changes after being introduced to the NPC for debating and voting, the organisations being authorised became *de facto* a legislator. Secondly, and most crucially, the majority of the authorised organisations were either government ministries or bureaus, and the laws they were appointed to draft had very close linkages to their area of administration. The case of the law-making plan of the eighth NPC clearly illustrates these two characteristic (see Fig. 12 and Table 10).

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[36] Zhi Cao, "Report Describing the Drafting Law-making Plan of the Eighth Npcsc (Guanyu "Bajie Quanguo Renda Changweihui Lifa Guihua Caogao" De Shuoming) " *Newsletters of the Works of the People's Congress (Renda gongzuo tongxun),* 5, no. 5 (1994): 5-7.

[37] The deputy law initiation is only possible by introducing a PMB that, according to the 1983 PMB act, should be endorsed by at least thirty deputies (a detailed introduction is in chapter 8).

[38] Randall Peerenboom, *China's Long March toward Rule of Law,* (Cambridge: Cambridge University Press, 2002). p. 262; Lubman, *Bird in a Cage: Legal Reform in China after Mao*. pp. 141-42.

Figure 12: *Different types of law-drafters: number and proportion in 1988* [39]
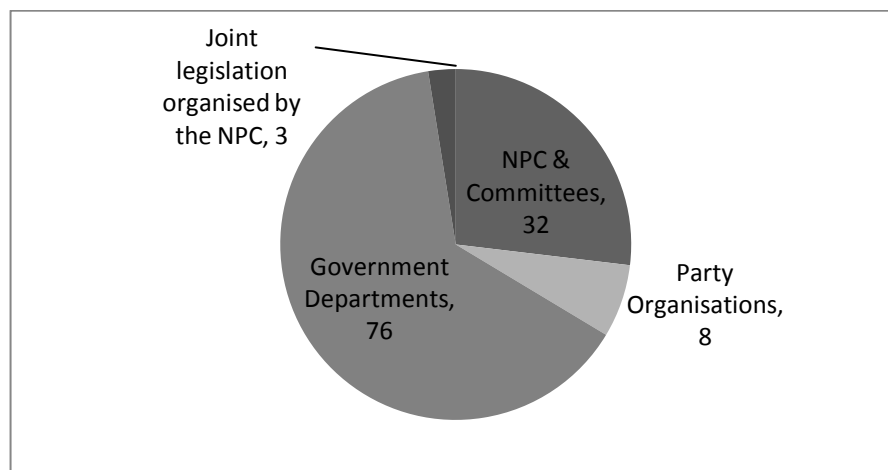
Source: "Report describing the Drafting Law-making Plan of the Eighth NPCSC".

Table 10: *Selected cases of 'government making its own law'*

Laws to be drafted	Drafting organisation
Water Law (amendment)	Ministry of Water Resources
Aviation Law	Civil Aviation Bureau
Ports Law	Ministry of Communications
Individual Income Tax Law (amendment)	Ministry of Finance
Audit Law	State Bureau of Auditing
Court Organisation Law (amendment)	The Supreme Court
Procuratorate Organisation Law (amendment)	The Supreme Procuratorate
Law of the Forming of Civic Organisations (Jie she Fa)	Ministry of Civil Affairs

Source: Ibid.

As laws were drafted by government ministries and bureaus and the NPC were very passive to make changes on draft laws, law-making was largely equated to making administrative regulations. This fact perfectly echoed the definition of Unger's second type of legal consciousness. As previously mentioned, this consciousness overlooks laws' crucial role in confining, or at least regulating, the unchecked political power, that would be essential in protecting the masses' basic individual rights and liberty. Such an overlooking was taken to its institutional extremes for instance, in two cases. The first was two regulations made in 1984 and 1985, in which the power of imposing new taxes

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[39] The Eighth NPC started in 1992 and therefore does not belong to the period of the 1980s. That data is used since the corresponding evidence of the 1980s was not observable. According to the limited data provided by Cai, the proportion of the NPC and Committees drafting in the Seventh NPC (1987) was 25% (proportions of other drafters were not available). Cai also confirms that the NPC had the intention to expand this proportion. Dingjian Cai, *Institution of the Chinese People's Congress (Zhongguo renmindaibiaodahui zhidu),* (Beijing: Law Press, 2003). 294-95. For similar research, see Zheng, *Will China Become Democratic? Elite, Class and Regime Transition.* p.56.

were almost given to the Central Government.[40] The second was the making of the Law on Assemblies, Processions and Demonstrations. With a start of its drafting process in 1989, this law had a clear aim of constraining the growing number and violence of pro-democracy demonstrations. Furthermore, it was drafted by the Ministry of Public Security (Police), which was at that time responsible for managing mass demonstrations.[41] This law consisted primarily of prohibitive regulations. Furthermore, extremely few were its articles limiting the power of related government institutions and protecting the masses' right to demonstrate. Consequently, it not only infringed the basic civil right of demonstration, but also conflicted with the Constitution.[42] It is important to mention that although the NPC in the 1980s attempted to reduce the number of 'government making its own law' cases, the power holders supported the delegated legislation because of their greater concern with the quality and quantity of law-making and their little concern with laws' function of legally preventing the civil rights from being infringed by arbitrary political power.[43]

3. The assent-giving function in the intellectual perspective

(1) Functional demands

The assent-giving function was one of the NPC's five primary functions identified and acknowledged by the authority. However, besides the default view that the NPC had an extremely low power and wish to refuse assent to the decisions on critical issues and decisions on personnel recruitment, the actual role of the power holders in influencing the development of this function was difficult to reveal. This difficulty came from the lack of primary evidence showing the power holders' attitudes and the corresponding

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[40] The 1985 resolution on "authorising the Central Government to make temporary regulations and stipulations of economic reform and opening up (Shouquan guowuyuan zai jingjitizhigaige he duiwaikaifang fangmian keyi zhiding zanxing de guiding huozhe tiaoli de jueding)". Approved by the third plenary session of the sixth NPC.

[41] However, it is undeniable a fact that its responsibility in the 1980s was to prevent and stifle demonstrations, but not to manage it.

[42] Interview, 03-11-2011. The interviewee recalls that the Law on Assemblies, Processions and Demonstrations was denounced by scholars as the 'Law on cannot assemble, procession, and demonstration'. According to the calculation made by Peerenboom, two-thirds of the legislation under delegated legislation contains unconstitutional articles. Peerenboom, *China's Long March toward Rule of Law*. p. 242.

[43] For example, "Peng zhen points out in a NPCSC meeting that economic related law-making is quite necessary, a stage of exploring and experimenting is inevitable (Pengzhen zai renda changweihui juxing de zuotanhui shang zhichu, jingjilifa henxuyao, tansuo shiyan jieduan buke shao)" in RMRB (24-01-1985).

actions: any of the believers in orthodox Marxism would not openly air the NPC's subordinate position in this area as it would be at odds with the classic Marxist doctrine that clearly gives the legislature the position of highest organ of state power. Avoiding challenging this 'principle', the power holders made many rhetoric speeches that largely hided their genuine ideas behind.[44]

Although primary evidence was insufficient to reveal the detail of the power holders' genuine ideas, it can be confirmed that the administrative efficiency was their primary concern.[45] Furthermore, a case study of the 'Strike Hard' Anti-Criminal Campaign would overcome the lack of evidence and illustrate how the power holders' emphasis of administrative efficiency significantly reduced their demand for the NPC to be effective in assent giving.

As a response to the quick growing criminal rate, the campaign was launched in 1983 and lasted for several years. Historically, non-official evidence seems to indicate that there might have been many cases of death penalty abuse applied on misdemeanours. An extreme case in point showed that a man was sentenced to death for stealing a watermelon. Judicial injustices happened in this campaign, encompassing torturing to get a confession, sentencing on the basis of confession instead of evidence, and even sentencing not by judges, were interpreted by legal scholars as the result of the judicial system being 'kidnapped' by political power.[46] In simple terms, the 'strike hard' campaign was the salient expression of the abuse of political power for pragmatic purposes without legal constraints. As to the role of the NPC, it is crucial to bear in mind that within each stage of the campaign, the NPC as the foremost monitor of the judicial power assented to all of the related decisions and made it possible of abusing political power.

For pragmatic purposes, the power holders allowed, and even advocated the NPC to assent to those decisions. Based on compilations of the power holders' speeches, a

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[44] For example, "President Zhao answers questions of journalists in the wine reception following the thirteenth Party Congress", *Xinhua Monthly*, issue 11, Vol. 517, (31-12-1987), pp. 41-44.

[45] Deng once said that "*the most crucial advantage of socialist state is that once a particular thing is decided to be done, every forces would come together to do so. We decided to start the economic reform, and then the whole country engaged into it. In this sense, our efficiency is high. We cannot import the so called western democracy, cannot import their mutual containing of three branches.*" Cites in Deng, "Take a Clear-Cut Stand against Bourgeois Liberalisation (Qizhi Xianming Di Fandui Zichan Jieji Ziyouhua)."

[46] For detailed discussion, see Murray Scot Tanner, "State Coercion and the Balance of Awe: The 1983-1986 "Stern Blows" Anti-Crime Campaign " *The China Journal*, no. 44 (2000): 93-125; Bin Liang, "Severe Strike Campaign in Transitional China" *Journal of Criminal Justice,* 33, no. 4 (2005): 387-99. Lubman, *Bird in a Cage: Legal Reform in China after Mao*. pp. 133-34.

timeline can be drawn: firstly, Deng, as a 'general director', put the issue of social instability on the table, urged the power holders of different 'mouths' to tackle.[47] As a response, movements were launched in the different 'mouth-systems', including the 'anti-spiritual pollution' campaign launched by the 'mouth-system' of ideological control, and the 'strike hard' campaign launched by the political legal 'mouth-system'. The directors of the Central CPC Political Legal Committee in this period openly pushed forward the campaign while saying very little about its resulting lawless abuse of political power.[48] Based on the speeches cited in the footnote, it can be seen that the power holders' demand for the NPC's assent-giving function came primarily from pragmatic purposes; more importantly, this purpose was given the highest priority.

(2) Institutional designs

The abovementioned 'strike hard' campaign was launched and developed by three decisions being assented by the NPC.[49] The power holders' intellectual ideas can be linked to their institutional designs of the NPC's assent-giving function by the following study based on the identifying of this Campaign's several facts.

Firstly, included in the NPC's decisions related to the 'Strike Hard' Campaign were many unconstitutional articles.[50] Secondly, there were many articles *de facto* amended both of the Criminal Law and the Criminal Procedural Law that were promulgated in

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[47] The issue was first brought forward by Deng in his speech to the Department of Public Security in Beidaihe, 19th of July, 1983.

[48] Zhen Peng, Speech delivered at the symposium of the public securities of the five major cities, (21-05-1981), in *Selected works of Pengzhen*, pp. 405-20. Evidence clearly shows that 'being lawful' largely meant to use law as a pragmatic weapon, instead of class dictatorship, to crash enemies, their unconcern with law's protective role made many illegal sentences inevitable. See Shi Qiao, "Concluding Speech at the 1987 National Political-Legal Working Conference " in *Qiao Shi on Democracy and Legal Works (Qiaoshi Tan Minzhu Yu Fazhi)*, ed. Qiao Shi, (Beijing: People's ress, 2012). book 1. pp. 110-18. Shi Qiao, "Speech on the Meeting with Cadres of the Political-Legal Bureau in Guangdong Province.," in *Qiao Shi on Democracy and Legal Works (Qiaoshi Tan Minzhu Yu Fazhi)*, ed. Shi Qiao, (Beijing: People's Press, 2012). book 1. pp. 14-30. Haiwen Li and Yanling Wang, *Dialogue between Two Centuries: Recalling Peng as the Founder of Chinese Legal System (Shiji duihua: yi xinzhongguo fazhi dianjiren pengzhen),* (Beijing: Qunzhong Press, 2002). p.11.

[49] They were (1) the 1981 "NPCSC Decision on Dealing with the Escaping or Recidivist Reform-through-Labour Prisoners" that was the first decision (even earlier than the start of the campaign) with the purpose of reducing the surging criminal rate. Other two decisions were made in 1983 as the directly responses to the campaign, which were (2) "The NPCSC Decision on Resolutely Punishing the Criminals Threatening Social Peace and Security" and its corresponding (3) "The NPCSC Decision on the Procedural of Swiftly Sentencing the Criminals Severely Endangering Public Safety and Security".

[50] For example, the 1981 decision allowed the deprivation of the household register of those recidivists and banned them from going back to their living place after the term of imprisonment, which was an obvious infringement of the constitution protecting the freedom of person of citizens (1978 Constitution, Chapter 3, article 47).

1979.[51] Three additional facts are also worth mentioning: (1) the campaign was launched by Deng's speech in July, 1983; (2) those two NPC decisions were made in September of the same year; the nearest NPC plenary session was held in May, 1984; and (3) the Criminal Law and the Criminal Procedural Law belong to the category of 'basic laws', any amendments on them should be given assent by the Plenary Session rather than the Standing Committee.

The above five pieces of empirical evidence illustrate that the NPCSC swiftly responded to the power holders' demand for restoring social peace by making unconstitutional amendments to the basic laws that the NPCSC should have no authority to make, through which this campaign was made possible. Based on this case, this research claims that strengthening the NPC's Standing Committee was the only available way of institutional change that could respond to the power holders' demands for the NPC to fulfil a subordinate and quick-responding assent-giving function. In the above case, those decisions that should be approved by the Plenary Committee had to wait at least eight months before the start of the Plenary Session in 1984. This time delay was avoided by merely requiring the approval of the NPCSC. Therefore, it explains the reason for the NPCSC's remarkable institutional developments that was much faster than did the Plenary Session. This claim is based on the fact that, on the one hand, in transforming party decisions into firm policy, the NPCSC as a standing organisation empowers the power holders' decisions much quicker than does the Plenary Session. On the other hand, its smaller size also made it easier to be controlled. In doing so, even a decision that was inconsistent with laws and procedures, as the example of 'strike hard campaign' shows, would be consented.[52]

III. Representation

Compared with the developments of the NPC representative function and institutional designs in the 1950s that were also under the influence of orthodox Marxism, the re-emergence of that intellectual idea in the post-Mao period largely shaped an NPC to

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[51] For example, Article one of the "decision on resolutely punishment"; article 1 and 2 of the "corresponding decision on procedural".

[52] In fact, in Peng's crucial report on strengthening the Standing Committee, its two institutional 'advantages' are highlighted. Zhen Peng, "Report on the Draft Constitutional Amendments (Guanyu Zhonghuarenmin Gongheguo Xianfa Xiugai Caoan De Baogao)", report delivered at the fifth plenary session of the fifth NPC, (26-11-1982). Research Section of the NPCSC General Office, *Documentary Compilation of the People's Congress System (1949-1990)*. pp. 113-21.

have many similarities with that of the 1950s. This section highlights the re-emergence of the power holders' certain orthodox Marxist ideas that linked to the development of the NPC's representative function. Based on which, it evaluates how those ideas affected the power holders' relevant functional demand and the corresponding institutional design.

1. Vanguard consciousness and its result

Regarding the power holders' intellectual background and its linkage to the legislative representative function, an immediate issue is how they defined the role of the masses and political power. Political power can be deemed as either a 'biting dog' that should be leashed[53] or the masses' leading vanguard. Correspondingly, the masses can be deemed as either a gathering of rational individuals who have various conflicting interests and need political power as mediators, or a gathering of unenlightened individuals whose 'collective unconsciousness' nature resulted in a necessity for them to be guided by a vanguard. Furthermore, these beliefs also linked to how the power holders defined democracy, particularly representative democracy. This definition may affect their demands for certain representative functions the NPC and its deputies were expected to fulfil.

In regard to the power holders' understanding of the masses, evidence shows that in the 1980s they openly acknowledged the existence of society-wide conflicts between individuals, regions, religions, and professions. Furthermore, it is observed that they stressed that the resolution of conflicts relied on consultations organised by the authority as the mediator.[54] At the same time, evidence strongly suggests that the power holders firmly believed in their vanguard role and the ensuing role in 'conflict mediator'. Such a belief was stressed not only in Deng's four basic principles, but was also ubiquitously seen in most, if not all, of the speeches, resolutions, and official publications. A salient example in point was Deng's landmark speech that has been applied to be the blueprint of the 1980s political reform:

> *In a big country like ours, it is inconceivable that unity of thinking could*
> *be achieved among our several hundred million people or that their efforts*

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[53] It means that the abuse of political power would be inevitable if it was not controlled or balanced.
[54] "Zhao discusses reform programme", *BR*, Vol.31, No. 13, (03-04-1988), p.5. Chih-yu Shih, *Collective Democracy,* (Hong Kong: Chinese University Press, 1999). pp. 226-27.

could be pooled to build socialism in the absence of a party whose members have a spirit of sacrifice and a high level of political awareness and discipline, a party that truly represents and unites the masses of people and exercises unified leadership. Without such a party, our country would split up and accomplish nothing.[55]

The power holders' abovementioned ideas were responsible for the following three characteristics that affected their relevant functional demands and institutional designs. (1) Because of their strong belief in the vanguard consciousness, the interest conflicts, which were called 'intra-people conflict' in the Marxist class-based context, were believed to require a top-down mediation made by the political authority. (2) The power holders' acknowledgement of the conflict of interests was not based on the denial of the Marxist claim that pursuing Communism was the foremost aim that should be under the leadership of the vanguard CPC and should be the highest priority than other aims. Therefore, the principles of 'lower obeys higher' and 'regional obeys universal' were still the guideline for 'socialist democracy'.[56] (3) The power holders' acknowledgement of the conflict did not weaken their belief in descriptive representation that had a strong linkage to the Marxist critiques of the 'bourgeois legislative trick'. Furthermore, the following idea of the power holders strengthened their belief in the descriptive representation: because the masses were grouped and divided by the interest conflicts. Therefore, it was appropriate and necessary to have deputies from each 'groups' and 'partitions' in taking part in the NPC.

2. Functional demands and institutional designs

(1) Functional demands

Following the above three characteristics, the impacts of orthodox Marxist intellectual ideas on the power holders' demands for the NPC representative function can be illustrated. Firstly, the belief that political power was in a top-down direction was

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[55] Cites in Deng, "on the Reform of the System of Party and State Leadership", Deng's speech in the enlarged conference of the CPC Central Politburo, 18-08-1980. English translation is based on the People Daily English Website. http://english.peopledaily.com.cn/dengxp/vol2/text/b1460.html.
[56] For example, see "Government Work Report" made in the second plenary session of the fifth NPC, 1979, in Red Flag, issue 7, (30-07-1979), pp. 3-27. See also Peng, "Report on the draft Constitutional amendments", report made in the fifth plenary session of the fifth NPC, 26-11-1982. In Reseach Section of the NPCSC General Office, *Documentary Compilation of the People's Congress System (1949-1990)*. pp. 113-21.

responsible for the re-emergence of the power holders' demand that deputies should be an agent of central decision makers. The specific task they were required to do, to use Xia's language, was an 'information broker': conveying and explaining the decisions made by the central power holders to the grassroots masses.[57] Compared with the same function in the 1950s, the power holders in the 1980s believed that the society had been more complicated and the conflict resolution required a much profound understanding of 'grassroots society'. Not witnessed in the 1950s, this consciousness resulted in their greater emphasis on the deputies' role as an investigator of the locality. To fulfil this role, deputies were told to build a firm linkage with their locality[58] during their daily living and working, to collect and make investigate of useful information, and to report it to the decision makers at a higher level. As Peng pointed out, the development of the linkage should not be the 'Western style' of direct voter-legislator contact that focuses on voters' specific demands. Peng encouraged deputies to fulfil the representative function by contacting the local people for the purpose of carrying out investigations of specific country-wide issues (e.g. drafting of certain laws). The outcomes of the investigations, Peng claims, should be reported to the central decision makers.[59] In his inaugural speech in 1988 as the NPCSC director, Wan warned the Standing Committee deputies of the importance of maintaining close ties with local people and making inspection tours.[60] At the same time, as pioneering research highlights, the power holders attempted to prevent the diversified interests of the masses from influencing politics. This influence was believed that would challenge the CPC's preclusive political power.[61] For the NPC's representative function, this influence may threaten the official-lead and top-down conflict solving mechanism by increasing those influencers' demand for a spontaneous and bottom-up political participation.

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[57] A salient example is observable in Jianying Ye, "Closing Statement", delivered at the second plenary session of the fifth NPC, (01-07-1979).

[58] It is crucial to highlight that deputies were just asked to build a close tie with grassroots masses, which not necessarily meant their constituency (e.g. it may refer to their work unit).

[59] Peng, "Several issues regarding the guiding principle of building the socialist spiritual civilisation (guanyu shehuizhuyi jingshenwenming jianshe zhidao sixiang de jige wenti)", in Editorial Committee on Party Literature of the Central Committee (ed.), *Selected Works of Pengzhen 1941-1990 (Pengzhen wenxuan),* (Beijing: People's Press, 1991).

[60] "New leaders address NPC", in *Beijing Reivew*, Vol.31 No. 17, (02-05-1988), p. 6.

[61] That is clearly the 'bottom line' for any power holders; see Honglin Li, *History of the Movements of Ideas in China (Zhongguo sixiang yundong shi),* (Hongkong: Tiandi Books, 1999). pp. 261, 287; Marsha L. Wagner, "The Strategies of the Student Democracy Movmeent in Beijing," in *Tiananmen : China's Struggle for Democracy : Its Prelude, Development, Aftermath, and Impact*, ed. Winston Yang and Marsha Wagner, (Baltimore, Md.: School of Law, University of Maryland, 1990).

Secondly, deputies were not encouraged to be a remonstrator. Primary evidence can only support the use of the term 'not encouraged' rather than 'prohibited' because, so far as the evidence in this research has shown, there seems to be no evidence found of encouraging or banning that activity. It is quite understandable: on one hand that the power holders did not want the NPC to be an arena of the deputies fighting for the interest of the localities and on the other hand, orthodox Marxism cannot offer them any tenable reasons to openly ban it.

In sharp contrast, NPC deputies were openly encouraged by the power holders to understand, follow, and contribute to the vanguard CPC's foremost target of realising Communism. For the representative function, its expression was encouraging the deputies to be an assistant of the vanguard CPC in offering constructive suggestions or proposals based on their experience of the locality rather than remonstrating for the local interest. In doing so, the power holders claimed, deputies contributed to the realisation of this foremost target.[62] The noticeable underlying logic was the power holders' belief that deputies belonged not to the group of intellectual vanguards; thereby it was highly possible that they would 'forget' the duty of helping realise the communist foremost target and would 'downgrade' to be guardians or remonstrators for local interests.

Thirdly, the power holders' belief in the descriptive representation directly connected to their demand for the NPC deputies to have a high representativeness. Also based on this belief, allocating seats for the purpose of positive discrimination was also popular in this period. However, compared with the 1950s NPC, the power holders' slightly different intellectual background in the 1980s resulted in a differing specific focus (see table 11 and figure 13).[63]

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[62] For example, the deputies were told that *"to conduct investigation in localities is not for decorating or for any formalist purposes; let alone the purpose of electioneering or any personal gain, which is the fundamental difference with the bourgeois legislatures"*. Cited in Hansheng Liao, "On Strengthening the Deputy-Voter Linkage", speech delivered at the Twenty first NPCSC meeting of the Sixth NPC, (22-06-1987). In *Documentary Compilation*, p. 608.
[63] A discussion of such difference can also be seen in Kevin J. O'Brien and Lianjiang Li, "Chinese Political Reform and the Question of 'Deputy Quality' " *China Information,* 8 no. 3 (1993): 20-31. Esp. Concluding section.

Table 11: *Similar and diversity of the power holders' allocating of NPC seats (1950s and 1980s)*

	1950s	1980s
Purpose	Allocating seats for the purpose of positive discrimination	
Intellectual background	Stressing class struggle	Stressing social diversity and conflicts of diversified interests
Specific Focus	Allocating seats to those people belonging to 'proletarian' class who had no opportunity to have their deputies in 'bourgeois' legislature	Allocating seats to those people belonging to sociologically disadvantaged groups, including ethnic minorities and women. It also attempted to enlarge deputies' regional and professional coverage
Expected outcome	Illustrating the NPC's strong representative function by showing the NPC and its deputies' high representativeness	

Table by author

Figure 13: *An official news journal cover page showing the official's specific focus of representatieness*
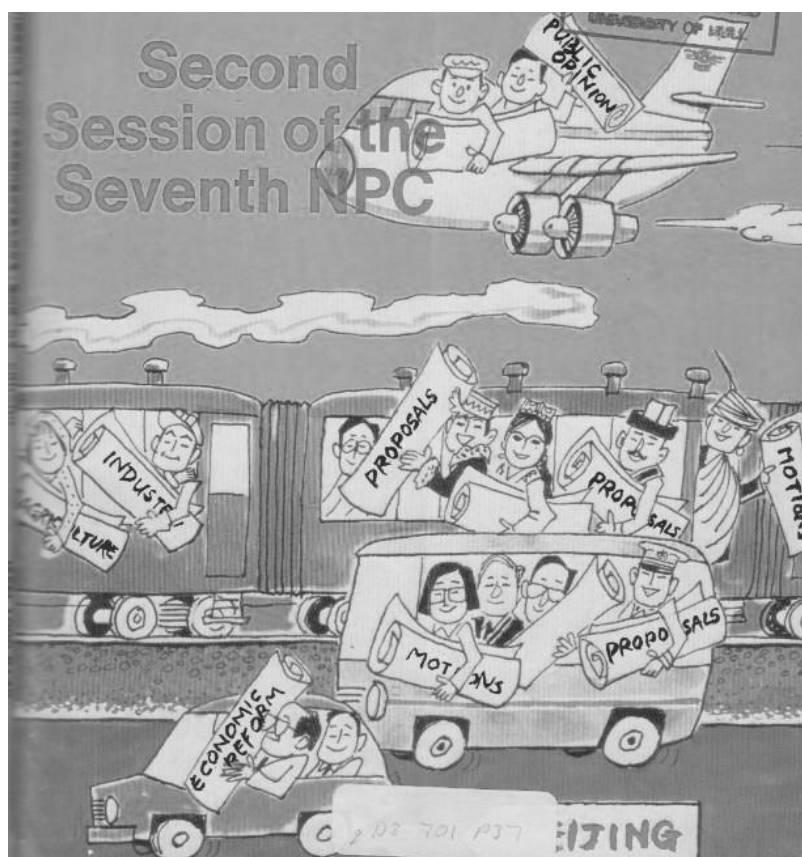
Source: Cover page, *BR*, Vol.32, No. 13, (02-04-1989).

Interpretation: The train passengers' unique dresses (in the right coach) illustrate the NPC deputies' high representativeness for ethnic minorities; Professional diversity is highlighted by various ways: two train passengers sitting in the left train coach not only have typical peasant and worker dressing but also have their PMBs on agriculture and industry (a typical expression of descriptive representation consciousness - only the deputies from that group can speak for that group); for the passengers on the coach, wearing glasses was a typical sign of the intellectuals, also in the coach was a police officer (or a deputy from the Army). Having a private car illustrates the passengers' profession of either government officers or entrepreneurs of private owned enterprise. The road mark (partly covered by the library tag) shows the road to Beijing where the NPC is held.

Perhaps the reason for strengthening deputies' professional coverage in the 1980s also came from the power holders' pragmatic purposes. To be an engine for economic growth, people such as the intellectual elite and entrepreneurs turned out to be an important human resource for the power holders. Those people were, before the 1980s, labelled as class enemies and precluded from the category of people. Some of them were even deprived of political rights and persecuted during the period when the Maoist Marxist class struggle doctrine reached an apogee. Giving those people deputyships meant to provide them with a guarantee that they were re-accepted as a part of proletarian class.[64]

(2) Institutional designs

Having a close linkage to the power holders' demand for the deputies to carry out top-down investigations was the establishment of two regulations. First was the regulation on strengthening the linkages of the deputies with other organisations, including the LPC and other governmental departments. Second was the regulation on deputies conducting inspection tours, which benefitted from the advocacy of power holders like Peng.[65]

Those two regulations are worth highlighting because they not only regulated the activities of deputies, but, more importantly, provided the deputies with more obliging

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[64] For related discussion, see Taotai Hsia and Wendy I. Zeldin, "Recent Legal Developments in the People's Republic of China " *Harvard International Law Journal,* 28, no. 2 (1987): pp. 249-87.
[65] Liao, "On Strengthening the Deputy-Voter Linkage".

power by forcing local political institutions to support inspections made by the NPC deputies.[66] In addition, this research claims that the making of two regulations was largely pushed on by the advocacy of the power holders in accordance with the principle that the deputy should be a top-town agent.[67] For example, in his speech regarding the NPCSC works, Peng said,

> *"The NPCSC requites the people's trust only if its members know well of our country by carrying out various investigations"*, *"it is a great misfortune that many decisions were so hastily made without sufficient investment"*, *"the investment here means not only to superficially make a tour in a local area; that activity should be systematic and focusing on specific issues"*.[68]

The above analysis on the two regulations reveals that any institutional development that was made to meet the demand for the representative function in a top-down direction contributed very little, if at all, to the strengthening of the legislator–voter tie. As an indicator measuring the legislatures' representative function, previous research revealed that such a tie in the NPC was quite weak (see the review chapter). Primary evidence shows that the power holders' passivity in institutionally strengthening the deputy accountability and supporting the deputies to remonstratively fight for the interest of the constituency were responsible for that weakness.[69] To be specific, on the one hand, so far as the primary evidence (Power holders' speeches and official documents, such as NPCSC decisions or CPC Central Committee decisions) this research observed, evidence cannot be found illustrating that the power holders had ever stressed the necessity for increasing deputy accountability in any form, including requiring deputies to report their work to the constituency, let alone providing the voters in local constituencies with any solid institutional support by which they can freely recall incompetent deputies.[70] On the other hand, evidence was observed showing the

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[66] "NPC Party Group: proposals on improving the arrangements of the NPC deputy inspection (zhonggong quanguo renda changweihui jiguan dangzu guanyu gaijin quanguo renda daibiao shicha banfa de yijian)" (23-12-1985), "NPCSC general office: proposals on NPC deputy inspection (quanguorenda changweihui bangongting guanyu quanguorenda daibiao chi shichazheng shicha de yijian)" (20-07-1987). In *Documentary Compilation*, p. 465, 469.

[67] According to article three of the 'inspection tour regulation', the aim of the inspections was to examine how well local authorities carried out the NPC decisions and how well they followed the NPC legislations.

[68] Zhen Peng, "Speech on the Symposium with NPCSC Deputies Staying in Beijing ", (24-01-1984). In *Documentary Compilation*, pp. 588-89.

[69] This has been partially responded to by academic research, see Dingjian Cai, *Explorations of Being a Researcher of the People's Congress System (Yige renda yanjiuzhe de tansuo),* (Wuhan: Wuhan University Press, 2007). pp. 433-38。

[70] Power holders encouraged certain innovative institutional designs strengthening deputies' works

power holders' lack of wish to institutionally buttress the remonstrative deputies. In his speech on the works aiming at strengthening deputies' linkage to localities, Peng Chong[71] made the following statement:

> "*Deputies should not directly deal with the problems they found in the inspection tour; those problems should be handled out to the Standing Committee. For those issues that should be dealt with by governmental departments, they would be dispatched by the Standing Committee.*"[72]

In a broader perspective, the power holders without wishes to institutionally support deputies to be remonstrative discouraged any development of the deputy election related institutions. The underlying logic of this passivity was the understanding that direct and universal elections, as well as electoral campaigns, would significantly strengthen the legislator-voter tie,[73] which would indirectly strengthen the deputy accountability and encourage the deputies to be more remonstrative.

The above analysis partially explains the reason as to why the development of the deputy electoral related institutions in the 1980s was imbalance. The expression of this imbalance were that a great progress was made to make the elections competitive; however, direct elections were only seen in the bottom two tiers of the LPC. To be specific, competitive elections for legislative deputies were seen quite uncommonly in the People's Congress in various tiers in the Maoist period. However, in the 1980s it became one of the major focuses of the power holders. Its immediate expression was their emphasis on the 'more candidates than places' principle.[74] The seventh NPC started in 1988 for the first time introduced this principle in the NPCSC deputy elections. In a round-up conference for the election, Peng Chong made a concluding speech, saying:

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in the constituency, including the establishment of the 'reception centre (Jiedaizhan)' that routinely open to the visits of the voters. However, it is important to notice that those establishments had contributed very little to enhance the deputy accountability. For example, the establishment of the reception centre facilitated the voter-deputy interaction; however, the deputy can still freely refuse to fulfil any of the voters' demands.

[71] Peng Chong was vice director of the NPCSC.

[72] Chong Peng, "Strengthening the Works of Deputies Contacting Localities (Jiaqiang Daibiao Lianxi Gongzuo)", (28-10-1988). In *Documentary Compilation*, pp. 618-620.

[73] Non-direct election cuts off the linkage between deputies and voters. It therefore provides deputies with greater opportunity to act by their own willingness or by following the Party whip. Non- direct election also significantly facilitated the CPC to allocating seats, thus may contribute the Party control within the legislature.

[74] This principle significantly enhances competitiveness of elections as it results in certain number of candidates losing the place.

"Nine candidates lost the election, this gives people both inside and outside China a very positive impression, how can we make any regression?!" Also in this speech, Peng said that *"reports from some local authorities say that the more-candidate-than-place principle is quite tough; however, it is not correct, that principle is the institution of democracy!"*[75]

The great institutional progress in competitive elections benefited from the power holders' advocacy. A salient example of this kind was their contributions to the promulgation of the 1979 Electoral Law that partially advocated, although not forced, the introduction of that principle.[76]

In contrast, the power holders were quite passive in advocating direct deputyship elections. Their excuses for the passivity that can be observed in the Maoist period were still used, that included the great fiscal cost of holding nation-wide elections, and the incompetence of the masses lacking essential political training.[77] In the same vein, the 1982 amendment to the Electoral Law retightened the partially released regulations regarding electoral campaigning and gave more power to the electoral committee.[78]

However, it is difficult to find evidence to show that power holders' demand for a wide coverage of deputy representativeness resulted in their encouragement to allocate seats. At least Deng and other power holders never said that the elections should deliberately ensure the representativeness. Instead, power holders spoke many times of the importance of keeping legislative elections under the regulations of the Electoral Law.[79] However, a considerable number of primary evidence is observable showing that the power holders at least acquiesced in the allocation of seats. Evidence in point can be observed not only from the annual NPCSC work report proudly speaking of the wide

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[75] Peng, "Strengthening the Works of Deputies Contacting Localities (Jiaqiang Daibiao Lianxi Gongzuo)". in *Documentary Compilation*, pp. 618-620.

[76] Zhen Peng, "Explanations of the Drafts of the Seven Laws", report delivered at the second plenary session meeting of the fifth NPC, (26-06-1979). in *Documentary Compilation*, pp. 161-62; Zhen Peng, "Comments on the Works of Election Piloting " in *On Development of Socialist Democracy and Legal System in the New Age (Lun Xinshiqi De Shehuizhuyi Minzhu Yu Fazhi Jianshe)*, ed. Zhen Peng, (Beijing: Central Party literature press, 1989). pp. 41-43.

[77] Dingjian Cai, *A Report on the Elections in China (Zhongguo xuanju zhuangkuang de baogao)*, (Beijing: Law Press, 2002). Part 1.

[78] Electoral Committee is a temporary committee that was established during each election to make regulations, guidelines, and arrangements for elections and was under the leadership of the Standing Committee of the People's Congress of the corresponding level.

[79] "Wang Hanbing answers journalist's questions about county and township level PCs elections (Wang hanbing jiu xian xiang liangji renmin daibiao huanjie xuanju da jizhewen)", in *People's Daily (RMRB)* (28-12-1986).

coverage of deputyship, but also from many pieces of power holders' speeches or reports.[80]

IV. Supervision

In 1987 Deng made a well-known statement, which introduced three criteria for evaluating the 'performance' of a political system: (1) whether it is stable; (2) whether it enhances the solidity of the people as well as living standard; (3) whether it facilitates the continuous development of productive force.[81] These criteria that did not include any aspects linked to promoting liberty and democracy were a perfect example showing that the power holders' orthodox Marxist ideas and the pragmatic concerns resulted in their passivity in protecting individual rights and interests, which directly impacted their supervisory function related functional demands and institutional designs.

1. "Neither neglect the duty, nor act beyond it"[82]

Since its first appearance in 1987, the slogan "*Neither neglect the duty, nor act beyond it (Jibushizhi Youbuyuequan)*" was regarded as the NPCSC's guiding principle, and was quickly cited by other power holders and official documents as the guiding principle of the supervisory related activities of the People's Congress of all levels.

This slogan is crucial in deciphering the power holders' attitude to the NPC's supervisory function. To better understand and interpret this slogan, two issues must be considered: what did the 'duty' mean, and what was the boundary distinguishing between fulfilling the duty and acting beyond it. In answering to them, several speeches (they soon became official document) are worth citing:

> *a) Regarding supervisory (function related) work, the NPC and its*
> *Standing Committee monitor the works of the Central Government, Central*

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[80] For example, in stressing that the deputyship cannot be given as an award, Wang in the above cited speech emphasised that "the deputies' quality, span of knowledge should be improved, average age should be reduced, candidate should have basic skills in discussing political issues." Obviously, unless artificially controlling the candidate nomination stage, those requirements can never be accomplished.

[81] Deng, *Selected Writings of Deng Xiaoping, Vol.3*. pp. 213-14.

[82] The title is a slogan by Peng Zhen that was first seen in his speech in the twenty first NPCSC conference of the sixth NPC in 1987.

Military Committee, the Supreme Court, and the Supreme Procuratorate by examining their working reports. If the administrative regulations or decisions made by the central and local governments were in conflict with the Constitution or other laws, the NPCSC has authority to annul. We NPCSC should strictly obey laws, we should neither neglect the duty, nor should we act beyond it.

b) We think that the supervisory related activities of the NPC and the NPCSC should primarily focus on the illegal activities of the administrative organisations, judicial organisations, and the PCs of lower tiers. Besides that, supervising the works of those organisations should also be included.

c) Examination of government work by the People's Congress does not mean the PCs are an opponent of the executive; it should also not interfere or even replace the government works. Instead, it means to examine whether the Constitution and other laws were obeyed.

d) No matter our works are known as supervision or examining, our shared target is to make sure everything is in consistency with the basis of law.[83]

As the above four citations show, the meaning of 'duty' was twofold: (1) to examine government processes and outcomes within those areas in which legal provisions clearly empowered and offered procedural guidance and (2) to ensure that the processes and outcomes of the government complied with NPC legislation. Based on which, the boundary identifying whether an act goes beyond the duty can be drawn: any supervisory related activities should be, and should only be, carried out based on legal regulations. To be specific, it not only stressed that the NPC can only engage in those supervisory activities approved by law, but also, more importantly, stressed that the object of related works should only be the executive's processes and outcomes that contradicted laws. Any supervision activity going beyond this boundary would be deemed to be an over-functioning.

This boundary weakened the NPC's supervisory function by significantly reducing its jurisdiction. This research claims that the making of this boundary had a clear linkage to

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[83] Citation a, b, and c cite in *Documentary Compilation*; citation d) cites in Editorial Committee on Party Literature of the Central Committee, *Selected Works of Pengzhen 1941-1990 (Pengzhen wenxuan)*. (Beijing: People's Press, 1991).

the power holders' belief that supervision should not be an activity of checking political power but be its auxiliary. This belief also directly linked to the orthodox Marxist idea that political power was under control of the vanguard party leadership that represents the masses' foremost interest (the meaning of a foremost interest is shown in the above section), which generated a belief that the executive and judicial organisations under the CPC's leadership had no chance to corrupt. [84] Therefore, under this belief, the supervisory function was interpreted as helping correct the flaws of the government processes and outcomes (e.g. an administrative provision), rather than preventing any abuse of political power. [85]

This consciousness was particularly popular in the 1980s also because it catered to the power holders' pragmatic demand for rapid economic growth. As previously discussed, although it is still an intensively debating topic as to whether reducing legislative supervision activities would strengthen the power of the executive and therefore facilitate economic growth, this idea was widely recognised in 1980s China.

2. The examination of government processes and outcomes function

(1) Functional demands

A notable characteristic of the power holders' demands for the NPC's examination of government work function was their imbalanced focus on specific aspects of this function. The majority of their concern was the NPC's supervisory function in ensuring the executives' processes and outcomes did not contradict laws, but had very little concern with those that could not be judged by legal provisions. In fact, besides the above cited few pieces of speech, examples showing that the power holders encouraged the NPC to be an active overseer of the executive's daily operations were not observed.

Such an imbalanced concern can be explained by considering the power holders' orthodox Marxist ideas that resulted in their demand for the NPC to fulfil an auxiliary role, rather than to check and balance in the use of political power. Examining

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[84] 'Corrupt' means not only bribery taking but also, more broadly, the making of any decisions according to personal or ulterior motives rather than the interest of the masses.
[85] An extreme salient example is Li Wan, "Comments on the Works of the NPCSC of the Seventh NPC (Speech on the First NPCSC Meeting of the Seventh NPC)," in *Wan Li on the Development of People's Democracy and Legal System (Wanli Lun Renmin Minzhu Fazhi Jianshe)*, ed. The NPCSC General Office editoral group of Wan's writings, (Beijing: democracy and legal press, 1996). pp. 104-08.

government work was an activity largely based on subjective observations of the related staff members and deputies, therefore, different observations made by different observers may result in a conflict. Taking a particular government outcome as an example, governmental staff may feel satisfied, while the NPC 'examiner' may not. This conflict was normally seen by the power holders as different political powers checking each other, which were seen as resulting in the reduction of administrative efficiency. [86] In contrast, the NPC's work preventing government processes and outcomes from conflicting with laws was appreciated, for it not only had little or no threat to the power and authority of the executive, but also directly contributed to the fulfilment of the power holders' pragmatic demands. As legal scholars illustrate, a supervisory function focusing only on examining the government processes and outcomes that contradicted laws was encouraged because it guaranteed the laws to be consistent and stable, which were the prerequisite of economic growth. Similarly, in making sure that the works of the executive complied with basic procedural laws, the legislature helped the executive to be less 'omnipotent'. Such a change also had an indirect benefit of diminishing the worsening administrative corruption.[87] This benefit was important for the power holders particularly in the late half of the 1980s when the masses were gradually losing patience with corruption.[88]

(2) Institutional designs

The power holders' lukewarm attitude toward encouraging the NPC to be more active in examining government processes and outcomes partly explained the underdevelopment of the related institutions. It is important to see that the power holders' tireless emphasis that supervisory work should be based on laws eventually led to a dead end of the related institutional developments. In simple terms, this function would have been unable to be fulfilled if it was asked to be strictly lawful because of the lack of related procedural laws. Taking the work of examining the governmental annual budget and final account as an example, the only related legislation was an article in the 1982

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[86] In the 1980s the term 'checks and balances of three branches' was translated into 'Sanquan Dingli'. The literal meaning of 'Dingli' is 'to contain each other and goes to a deadlock', which is a derogatory term; in contrast, since 1990, the term 'checks and balances' was gradually translated into 'fenli', which is neutral term and literally only means separation.

[87] A strong and centralised government, particularly when its activities are not under constraint of the related procedural and organisational laws, would result in administrative corruption, as such a power would encourage staff members to engage in rent-seeking.

[88] This idea is illustrated in almost every research of Chinese legal development, for typical examples, see Potter, "Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China"; Baum, "Modernization and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality"; Yu, "Legal Pragmatism in the People's Republic of China".

Constitution that simply empowered the NPC to examine the budget and final account reports. The Budget Law was promulgated in 1994, which means in the whole period of the 1980s, no law could be found that specifically legalised the process of examination, including what to do if the report failed to pass the examination, how to re-examine, who should be charged if the government failed to comply with the budget. More importantly, primary evidence showing that the power holders advocated the improvement of the related procedural legislation was extremely rare,[89] which was a sharp contrast to their enthusiasm in improving economic and social administrative related legislation.

The power holders' focus on the NPC's role in examining only the executive's processes and outcomes in contradictory laws arguably resulted in another outcome that their attempt at giving People's Congress more power to supervise the executive was largely seen in the LPC but not the NPC. This resulted in a fact that many institutional innovations in this area *de facto* started from the LPC.[90] As the review chapter shows, the 'cooperation' model highlights the party's demand for the legislatures to examine the executives. This model is not necessarily incorrect. However, it is crucial to bear in mind that the reason for the CPC to have such a demand was largely because the party in the second half of the 1980s launched a reform of 'separating the party and executive (Dang zheng fen kai)'. This reform was conducted primarily in the local level rather than the state level. A salient example was the experimental reform in the city of Anyang: the reform closed all party organisations that overlapped with governmental organisations. It also withdrew the party committee from controlling specific administrative affairs. Meanwhile, most importantly, in making changes to the 'convention' of the party committee directly controlling the executive, the reform urged the party committee to lead the executive through the legislature.[91] The huge developments at the LPC's supervision related institutions were also testified by the fact

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[89] The only observed evidence comes from Chen, Pixian. "On the Supervision Power of the People's Congress and Its Standing Committee (Lun Renda Jiqi Changweihui De Jianduquan)", In *China Law Year Book (Zhongguo Falv Nianjian)*, issue 1988, p. 618.

[90] See Xuedong Yang, "Making Congreassional Oversight Work: A Perspective on a Governance Paradigm (Difang Renda Jianduquan De Youxiao Shixian)," in *China Public Administration Review (Gonggong Guanli Pinglun)* Vol.3, ed. Yongping Wu, (Beijing Tsinghua University Press, 2005). pp. 37-57.

[91] Detailed introduction to the Anyang reform can be seen in Yun li and Jing Feng, "Anyang begins political reform", in *BR*, Vol.31, No. 12, (27-03-1988), pp. 17-21.

that all of the 'cooperation' models were established in the research of the different tiers of the LPC (Xia and Chou) or the whole system that consists of five layers (O'Brien).[92]

3. The regime failsafe function in the intellectual perspective

(1) Functional demands

The regime failsafe function was not stated in any coded laws; however, primary evidence illustrates that it was in fact one of the primary driving forces for the power holders to strengthen the NPC's authority. Their willingness to do so was particularly strong in the first several years of the post-Mao period. Within that period, the NPC was deemed to be a crucial institution in fulfilling the power holders' demands for improving socialist democracy and rebuild the legal system. Both of these were believed to be effective in preventing political power being kidnapped by an individual with ambition to seize an absolute power.[93] However, as chapter three mentioned, the NPC should have an adequate structural strength to fulfil those demands. In other words, it should have authority to examine all of the political institutions, including the CPC. It is apparent that in the 1980s the primary hindrance for the NPC to have that authority came not from the government but from the CPC. Specifically, whether the government was institutionally subject to the NPC's supervision was not a debatable issue; it became a hot topic of debate when things changed to the CPC-NPC relation. Moreover, this issue directly determined whether the regime failsafe function could be fulfilled because of the ubiquitous 'iron law' stating that in a single party system, any potential dictator must firstly take control of the party before carrying out personal ruling under the camouflage of the party.[94]

To be the consequence of the 'iron law', this research highlights a paradox that the power holders on the one hand demanded the regime failsafe function; however, on the other hand, due to their denial of discussing the issue of putting the party under supervision, they had no opportunity to strengthen this function by making and

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[92] O'Brien's 'embedded' model is brought forward in his research of the People's Congress system of five levels although his research of the National level people's congress also mentioned the existence of 'cooperation' (*Reform Without Liberalization*, p. 164).

[93] It is worth highlighting again that the meaning of democracy and legal system was different from the default understanding from the non-Marxist discourse: what the power holders want to prevent is not a monopolised political power, but a monopolised power being controlled by an individual.

[94] Li, *From Russian Proletariat Dictatorship to Chinese People's Democratic Dictatorship*. Book 2, Chapter 7-8.

advocating new institutional designs. Under these circumstances, the institutional designs related to the NPC's role in supervising the CPC, including those less aggressive designs attempting to put all of the party activities within the framework legislature, had no chance to be realised, which meant that the most crucial prerequisite for the NPC to fulfil the 'regime failsafe' function was not matched.

Primary evidence mentioned below shows that the orthodox Marxist intellectual ideas played a vital role in shaping this paradox. Specifically, the influence of these ideas can be identified as resulting in the power holders' beliefs in three uniformities. The first one was the uniformity of a foremost target between the party and the masses. Under its impact, the party was believed to have the same target with the NPC who represents the interest of the masses. Therefore, for the power holders who believed in these ideas, it was not possible for the CPC to use its political power for any personal gain or other purposes.[95] The second uniformity was between party regulations and laws: as they were both created to pragmatically facilitate the shared foremost target, there cannot be any conflicts between them. Some power holders went even further in stressing that party regulations were more important than state legislation.[96] The third and decisive uniformity was between the party leadership and the democracy of the masses, which had an origin in the vanguard consciousness. According to an official rhetoric, this uniformity was simplified into the principle that the masses enjoy democracy by the institution of the PCs that is under the leadership of the CPC. Despite its fatal logical contradiction, this principle was further developed by the power holders into a slogan in the later period, which was "*a 'trinity' of party leadership, the masses as the master of the state, and the rule by law.*"[97]

Directly linked to those intellectual ideas were the power holders' clear rejection of encouraging the NPC to engage in the examination of party activities. To the contrary, they told PCs staff members and deputies that the supervision must be under the leadership of the party:

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[95] See, for example, Zhen Peng, "Speech on the Symposium with Directors of Provincial Level Pcs Standing Committees (1986)", (27-06-1986). Chen, "On the Supervision Power of the People's Congress and Its Standing Committee (Lun Renda Jiqi Changweihui De Jianduquan)".

[96] Peng Zhen once cited Deng's language that "state should have its own law, Party should have its own regulations, the state legislation cannot be secured if the ruling Party has no regulations." Cites in Peng, "Speech on the Symposium with Directors of Provincial Level PCs Standing Committees (1986)".

[97] Firstly brought forward in the Report of the sixteenth Party Congress held in 2002.

a) Someone raise an issue that party Committee Secretary General, People's Congress Chairman, and the head of the government, who is the highest? We do not play that trick; we depend on the established institutions, the intra-party affairs are judged by the party regulations, the affairs of the state are judged by the state legislation.

Source: Peng, "Speech on the Symposium with Directors of Provincial Level Pcs Standing Committees (1986)". in *Documentary Compilation* pp. 601-03

b) The abovementioned seven aspects of supervision work cannot be fulfilled only by the PCs. The PCs can be qualified for that work only if it was under the party leadership. To be sure, the party should be supervised by the masses; however, it should be clarified that such work should only be under the leadership of the party.

Source: Zhen Peng, "Speech on the Symposium with Directors of Provincial Level Pcs Standing Committees (1985)", (24-11-1985). in *Documentary Compilation* pp. 599-601

C) PCs of all tiers, including the Standing Committees, should resolutely respect and obey the party leadership. The party committee must be preliminarily reported before any examining activities were discussed in the PCs. the PCs should seek assistance from the party in solving any troublesome supervision related issue.

Source: Chen, "On the Supervision Power of the People's Congress and Its Standing Committee (Lun Renda Jiqi Changweihui De Jianduquan)".

(2) Institutional designs

It is crucial to highlight that the power holders' deliberate overlooking and denying of making the NPC the examiner of the CPC resulted in a NPC with remarkably weak structural strength. This cause-and-effect relationship can be witnessed from a (normally overlooked) fact that the power holders, although repeatedly stressing the importance of overseeing political power, had very little wish to highlight the key

institutional settings that have been stated and confirmed by the 1982 constitution that gave the NPC the highest post of the state power. Arguably, a society-wide awareness and acceptance of those settings would provide the NPC with sufficient structural strength in supervising the party, which would shake the actural party-legislature relation in which the CPC dominated other institutions. This argument is understandable considering in the following study of the Legal-Education Campaign (Pu Fa Yundong).[98] This case study shows that the power holders deliberately avoided the masses to know certain legal provisions that can be used to strengthen the NPC's regime failsafe function.

In general, the campaign was clearly the outcome of the 'rule by law' concept. According to the 1985 NPCSC resolution on starting the campaign, this campaign was designed to serve the foremost target of *"strengthening socialist legal system, protecting the security of the state, promoting the construction of the socialist material and spiritual civilisation, and protecting the general target of the country"*.[99] Clearly, the list of targets illustrates that the campaign was launched purely for pragmatic purposes (even 'strengthening socialist legal system', according to the above study of the 'strike hard' campaign, had pragmatic purposes). It contributed very little to provide the masses with laws as a 'weapon' to fight against the arbitrary authorities.[100]

To be specific, according to a detailed schedule of legal education that was made by the party's department of propaganda, the proposed education aimed at giving the masses a basic understanding of the Constitution, Criminal Law, Criminal Procedural Law, Civil Procedural Law, Marriage Law, Succession Law, Economic Contract Law, Conscription Law, and the Regulations on punishments in public order and security administration.[101] As the schedule shows, although the two basic procedural laws were included, it mainly consisted of the laws related to social administration. Furthermore,

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[98] The campaign was launched by the power holders as a commitment to disseminating legal knowledge among the Party and governmental cadres, as well as the masses, particularly the youngsters. Detailed introduction of the movement can be found in Hsia and Zeldin, "Recent Legal Developments in the People's Republic of China".

[99] NPCSC, "Resolution on Acquainting Citizens with Basic Knowledge of Law ", Resolution delivered at the thirteenth NPCSC meeting of the sixth NPC, (22-11-1985).

[100] Lubman, *Bird in a Cage: Legal Reform in China after Mao*. p. 132. Evidence can be found in almost every Chinese language literature focusing on the legal education campaign. For example, Maozeng Lu, "Profunding the Legal Education under the Guidance of the Thirteenth CPC Conference (yi dang de shisanda jingshen wei zhizhen ba pufa jiaoyu jinyibu yinxiang shenru) " *Shandong Law Science (Shandong Faxue)*, no. 2 (1988). 2-6 (the author was vice director of the CPC Shandong Province Committee).

[101] *Handbook of Legal Education (Pu fa Shouce),* (Beijing: Law Press, 1986).

the above discussed two unconstitutional regulations that were made to echo the 'strike-hard' campaign were also included in the list.

Comprising the Constitution in the schedule of teaching was an opportunity to inform the masses about the NPC's highest position in the state. However, evidence illustrates that it was not the purpose of the power holders. As Peng's speech on the campaign clearly showed, *"the core issue of practising the articles of the Constitution is to guard and develop the socialist system – the socialist road cannot be deviated or overlooked in any circumstance;"*[102] also in this speech, he stressed that the media and propaganda department should use the Constitution as a weapon to fight against *"capitalist thought, feudalist thought, and other corruptive thought."*[103] In another speech in the first session of the sixth NPC, Peng required all of the CPC's peripheral organisations [104] to encourage the masses to learn, understand, and protect the Constitution without stressing that the NPC has been given the highest post by the Constitution and has an obligation to protect the Constitution. Moreover, the speech overlooked the issue of the NPC supervising the party, which was replaced by a forceless claim that the CPC members should *"act as a model in obeying the laws"*.[105] Those citations were echoed by a NPC resolution asserting that the legal education, particularly the Constitution related education, should be stressed in order to *"secure social stability and unity"*.[106] Based on the above citations, a conclusion can be made – although this research cannot indulge in a detailed survey on the contents of the Constitution related educations, strengthening the NPC's regime failsafe function by consolidating its institutional strength was not the concern of the power holders who launched the campaign.

In addition, it is noticeable that the power holders' ignorance and overlooking of the issue of the NPC supervising the CPC directly resulted in an ambiguity in the

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[102] Zhen Peng, "Talks with Xinhua News Agency Journalists at the First Anniversary of the Promulgation of the Constitution ", (03-12-1983). In *Selected writings of Pengzhen*, pp. 482-90.

[103] This language was said during the 'anti-spiritual pollution' campaign that was launched to purge non-Marxist thought.

[104] 'Peripheral organisations' refers to those organisations that are autonomous in liberal democratic countries, but are partially under control of the ruling Party in the Communist system. The typical example includes trade union, women's federation, and Communist youth leagues. Details can be found in Duverger's typology of Parties.

[105] Zhen Peng, Speech delivered at the first plenary session conference of the sixth NPC, (21-06-1983). *Selected writings of Pengzhen*, pp. 473-81.

[106] NPCSC, "Resolution on Securing Social Stability and Unity by Strengthening Legal Education", Resolution delivered at the ninetenth NPCSC meeting of the sixth NPC, (22-01-1987). Evidence can also be found in the working reports of governmental departments. For example, Yongfu Li, "Report on Profoundly Carrying out Legal, Particularly the Constitutional, Education (guanyu shenru jinxing yi xianfa wei zhongdian de pufa jiaoyu de qingkuang baogao)" *Gazette of Shanghai City People's Congress Standing Committee (Shanghaishi renda changweihui gongbao)*, no. 8 (1987). pp. 4-18.

institutional relationships between the NPC and other institutions, particularly the party. When the great tension between the masses and the party was about to burst into violent conflict in 1989, the NPC's failsafe function, having no chance to find any institutional support, failed to do anything to prevent the tragedy.

V. Legitimising

The NPC's legitimising function was never officially acknowledged in the 1980s. The reason was not because Chinese legislature had no such function, but because the power holders in the 1980s had no need to demand rational-legal based legislative institutional designs to legitimise the Communist regime. However, this section highlights that, also not directly mentioned in any official rhetoric, the power holders in the 1980s demanded the NPC to fulfil the legitimising policy function.

1. The power holders' demand for the function of legitimising policy

Regarding the power holders' functional demand for the NPC to be a legitimacy provider, this research claims that such a demand in the 1980s belonged to the 'legitimising policy' function and had no correlation with the 'legitimising the regime' function. This claim is based on three reasons. Firstly, for the power holders, losing certain aspects of control over the NPC would be inevitable if they wish the NPC to be the regime legitimacy provider. For the NPC, fulfilling this function required it to have a greater transparency and public accessibility; however, such an increase would directly threaten the power holders' preclusive control of political power.

Secondly, in the 1980s negative legitimacy and performance legitimacy was the power holders' primary legitimacy provider. Both of which provided the CPC with adequate amount of legitimacy to maintain its control over the regime. Having that source further reduced the necessity for the power holders to obtain legitimacy by new NPC institutional designs on a rational-legal basis. Regarding the performance legitimacy, needless to say, great economic growth in the 1980s was the primary reason for the fact that even in the most severe political clash during this period the demonstrators had no attempt to subvert the CPC's rule. Moreover, in intensifying the contrast between the great damage of the CR and the great economic success since the end of the CR, the

power holders in the 1980s successfully 'developed' the CPC's grave past and obtained strong support from negative legitimacy. Interestingly, according to Huntington's original definition, negative legitimacy normally comes from current regime denouncing the dark past of the previous regime.[107]

Thirdly, although the power holders had no demand for the NPC to be a regime legitimacy provider, they could not deny the NPC's crucial role in legitimising policy (transforming a party decision into state policy), because it is the prerequisite for the party to obtain negative legitimacy. Following the above discussion, obtaining negative legitimacy from its own past was not without cost. The masses were told that the CR tragedy was the result of the fatal institutional flaw that allowed an individual, by controlling the ruling party, to directly transform his wish into policy without an institutionalised transforming process.[108] Consequently, the displeasing past can be a source of negative legitimacy only if the power holders in the post-Mao period could institutionally prevent the tragedy from happening again by at least adding in the institutions a policy transforming process. Therefore any wish or decision of the power holders, under this process, could be transformed into policy only by an institutionalised process. Similarly, failure to fulfil that function would also threaten the performance legitimacy because the example of the CR shows that dictatorship harmed economic growth.

2. Functional demands and institutional designs

Many pieces of primary evidence testify to the above claim that the power holders demanded only the 'legitimising policy' function. The most noticeable evidence came from the power holders' warning to the director of the party committees of each level, asking them to distinguish between party decision and state policy. This warning was stated by the CPC's resolution banning "*replacing administration by the party, replacing the laws by personal individual speech (Yidangdaizheng, yiyandaifa)*".[109]

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[107] Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century,* (Norman: University of Oklahoma Press, 1991). pp. 49-50.

[108] However, it is worth stressing that the mutated party-state relationship (party controlling over the NPC) that was an institutional flaw resulting in the CR was not included in the reflections of the official rhetoric.

[109] The CPC Central Committee, "The CPC Central Committee Directive on Resolutely Guarding the Practice of Criminal Law and Criminal Procedural Law (Zhonggong Zhongyang Guanyu Jianjue Baozheng Xingfa Xingshi Susongfa Qieshi Shishi De Zhishi)", (09-09-1979). This document is normally called as "file No. 64".

Evidence also showed the power holders' lack of demand for improving the NPC's 'legitimising the regime' function. Although the power holders emphasised that party decisions must be transformed into policies by the NPC, they never pointed out that the existing transformation process was largely, if not all, nominal. Furthermore, very few were observable cases showing that the power holders ever advocated strengthening the NPC's 'legitimising the regime' function by increasing its transparency, accessibility, and public participation.[110]

Regarding the corresponding institutional designs, very little evidence can be found showing that the power holders advocated institutional innovations that would increase the NPC's 'legitimising the regime' function by increasing its transparency, accessibility, and ways of participation. According to O'Brien, in the post-Mao period the power holders partially opened the tightly closed political system to the non-party elite in return for their political loyalty. However, it was still not open to mass participation.[111] It is noticeable that primarily during the period 1987-1989 several NPC procedural regulations were made in order to institutionalise the decision making process (which can be largely seen as an increasing to the legitimacy policies function), and the making of those regulations was benefited from the advocates of the power holders.[112] Meanwhile, those regulations can hardly be deemed to have made any significant contribution to increase the legal-rational legitimacy (which is the foundation of the 'legitimising the regime' function). An example is the 1989 "draft regulation on the procedural of the NPC (Quanguo renda yishi guize caoan)".[113] Being made to regulate the procedures of the NPC Plenary Session, this important regulation stated that (1) deputies should be given the law drafts that will be discussed at least one

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[110] Survey is made based on NPCSC Research Section, *Documentary Compilation*, Section Nine, as well as the selected writings of the key power holders, including Peng Zhen, Wan Li, and Qiao Shi. The only observable case is Wan Li's inaugural speech in 1988, in which he mentioned that "*the transparency of the NPC and the NPCSC activities should be increased*". in many cases the power holders equated increasing participation and transparency as strengthening the deputy-voter tie.

[111] O'Brien, *Reform without Liberalization*. p. 173.

[112] Including: (1) 1987 Procedural Regulation for the NPCSC (Changwu weiyuanhui yishi guize); (2) 1989 Procedural Regulation for NPC Plenary Session (quanguo renmin daibiao dahui yishi guize); (3) several Working Regulations for each of the NPC Committees and other working organisations (e.g. NPCSC chairmans group meeting, NPCSC secretaries working meeting) that were made in 1988. All of the abovementioned regulations are available in the *Documentary Compilation*. Evidence shows that the unprecedented development directly benefited from NPCSC director Wan Li's advocacy. See "Wan li holds a symposium with NPCSC deputies (Wan li zhuchi renda changweihui zai jing weiyuan zuotanhui)" in *RMRB* (08-12-1988); his speech delivered in this symposium can be seen at *Wan Li on the Development of People's Democracy and Legal System"*, pp. 121-24; "Wan li invites legal scholars to a symposium regarding advancing the making of NPC procedural regulation and law-making works (wan li yaoqing shoudu falv zhuanjia zuotan zhengqiu dui quanguorenda yishi guize caoan he lifa gongzuo yijian)" in RMRB (21-12-1988).

[113] See *Documentary Compilation,* pp. 351-55.

month prior to the start of the forthcoming conference; (2) the related NPC committees would receive the governmental budget and final account report at least one month prior to the forthcoming conference; (3) the Central Government should offer deputies a very detailed budget and final account report during the plenary session.[114] This example shows that the regulations made during this period could hardly be seen to be the result of the demand for an increase in the 'legitimising the regime' function because those designs were primarily aiming to institutionalise the process of transforming decisions into policies or legislation. As a direct contrast, the procedural regulations made during this period contributed very little to institutionally increase transparency, accessibility, and mass participation. Taking the abovementioned regulation as an example, article 25 of that regulation stated that "*the NPCSC can (not "should") release important law drafts to the public*"; article 18 said that "*the visitors' gallery should be established to allow public observers; specific arrangements will be designed in the forthcoming regulations*". However, so far the specific arrangements have still not been made. Another example comes from the regulation of NPC press conferences that was established in 1988. This regulation set many hindrances for the media to freely access information. Those hindrances included having no question and answer session for journalists, giving attendance allowance to the specific and limited official media, and the preliminary censorship of the draft for the speeches in the conference.

Conclusion

The role of the power holders in the NPC reform has been a hotly debated topic in related academic research. The intellectual perspective offered an innovative approach to that topic; based on the claim that factional struggle was not a significant variable in the NPC reform, this chapter illustrated how the power holders' orthodox Marxist intellectual ideas, as well as their pragmatic attitude, shaped their basic functional demands and specific institutional designs related to the reform. The analysis of the primary data shows that the functional demands of the power holders significantly affected their specific focus, and specific designs, of the NPC institutions. More importantly, because the power holders kept adhering to the basic Marxist intellectual tenets, some aspects of their functional demands, particularly the regime failsafe

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[114] Hanbin Wang, "Explanations for the (Draft) Procedural Regulation of the NPC", Report delivered at the second NPC plenary session meeting of the seventh NPC, (28-03-1989). *Documentary Compilation*, pp. 355-56.

function and 'legitimising the regime' function were weak. As a result, although the power holders' pragmatic demands provided the NPC with many opportunities to develop new institutional designs, the developments pushed forward by them can be only seen in very limited areas.

It is crucial to bear in mind that unless there is a change in the intellectual background, institutional flaws caused by lacking corresponding functional demands are not able to be addressed, no matter how strong the reform participants' pragmatic demands would be. It is also worth noticing that although the power holders played a significant role in the NPC development, this group was by no means the sole influencer. An example in point is that although the power holders strongly discouraged deputies from acting as a bottom-up remonstrator, deputies would do so under the influence of traditional Chinese political culture compelling them to protest for redressing the grievances of the masses. Therefore, it is necessary to keep exploring the roles of other influencers of the NPC reform.

Chapter 8. NPC Deputies and Staff Members

Introduction

This chapter focuses on NPC deputies and staff members that were another group of NPC reform influencers in the 1980s. A noticeable thing is that NPC deputies largely did not overlap with staff members; they were studied in this same chapter in terms of their similarities in jurisdiction (both stayed inside the political system), position (both groups belonged to the political-legal 'mouth-system'), and impacts to the NPC reforms.

Based on the findings from the interviews and archive of this study, the chapter reveals the intellectual background of this group. It pays particular attention to deputy selecting criteria and deputy training scheme that can be confirmed to be the most crucial factor in shaping deputies' intellectual background. Furthermore, this chapter illustrates how the intellectual background of the members of this group shaped their unique functional demands and how it influenced their specific institutional designs.

I. Intellectual background

It is important to reaffirm that in the 1980s NPC deputies and staff members were 'selected' but not 'elected' by popular vote. This understanding is the prerequisite of revealing their intellectual ideas. The selection process was largely, if not all, under the manipulation of the CPC. Its primary strategy of manipulation was to control candidate nomination process (allocating seats in the legislative elections).[1] As the following study shows, the manipulation secured that in the 1980s the great majority of NPC deputies kept loyalty to the CPC and its intellectual background. As a result, orthodox Marxism was consensual among this group of influencers. In general, the criteria consisted of one prerequisite and other three criteria.

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[1] Refined candidate list is fixed by the Party committee and the Party group. See Xueyou Huang, *Practical Guidance of the People's Congress Works (Renda gongzuo shiwu),* (Beijing: Democracy and legal Press, 2003). p. 134; Kevin J. O'Brien, "Legislative Development and Chinese Political Change " *Studies In Comparative Communism,* 22, no. 1 (1989): 57-75; Shih, *Collective Democracy.* p. 231-32. That strategy is most remarkably illustrated in the NPC Deputy Credentials Committee. The Report for deputy election is made in every five years, in which the fairness of election is appreciated; however, strategies of allocating seats by controlling deputy nomination process is never mentioned. The Report in the fifth (1978), sixth (1983), and seventh (1988) NPC can be seen in Liu and Cheng, *Encyclopedia of Institution-Related Works of the People's Congress 1949-1998.* pp. 299-302.

1. Political attitude as the prerequisite of deputy selection

As Chen reveals, 'sticking to the four cardinal principles' was the prerequisite for anybody to be selected as a candidate deputy in the 1980s.[2] It is worth highlighting that such a criterion was not the invention of the 1980s; as chapter five has illustrated, since 1957 political attitude became a basic criterion. In the 1980s this criterion was clarified by the 'Four Cardinal Principles' that largely repeated the two Marxist intellectual tenets. Meanwhile, such a criterion also made impossible for the NPC to accept deputies having radical Marxist ideas because deputies were required to stick to basic Marxist tenets that, in the 1980s, belonged to orthodox Marxism and not Maoist radical Marxism. The outcome of this prerequisite was clearly observed in the interviews with seven interviewees who served as a deputy in the NPC during the 1980s. For example, in the interview, all the seventeen interviewees listed in the appendix expressed their resentment at the tragedy of the CR.

2. Three criteria

In addition to the prerequisite, there were also three other criteria in the selection of deputies. All of them ensured that the majority of NPC deputies in the 1980s would subordinately obey the orthodox Marist ideas.[3]

First, many party and governmental officers (two roles normally overlapping), particularly those senior ranking officers, were automatically endowed with deputyships in the People's Congress (could be either in NPC or LPC level). This 'convention' led to a high proportion of officer deputies in the NPC.[4] These deputies were the most firm supporters of the orthodox Marxist tenets because (1) the party's vanguard position was a crucial source of their legitimacy; (2) any ideological 'disloyalty' would automatically lead to the removal of their senior ranking positions.

Second, it was commonly observed in the 1980s that deputyships were given as a reward for model workers and peasants. Although detailed statistical evidence is not

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[2] Chen, *Democratic Experimentation under Party Dictatorship*.

[3] O'Brien and Li has made a very impressive contribution to the revealing of the criteria of deputy selection, see Kevin J. O'Brien and Lianjiang Li, "Chinese Political Reform and the Question of 'Deputy Quality'" *China Information,* 8 no. 3 (1993): 20-31. especially the typoligy of the three types of deputies.

[4] The proportion of cadre deputies in the 5th, 6th, and 7th NPC was 13.38%, 21.4%, and 24.7% respectively. Data based on Reseach Section of the NPCSC General Office, *Documentary Compilation of the People's Congress System (1949-1990).* p.857.

available, according to author's observation of both interview and documentary data, none of the deputies who expressed dissatisfaction or complained about the NPC institutional settings come from this type. The reason for such subordination was arguably a huge benefit for being a model worker or peasant (to be a deputy was only one of a series of benefits), that was given by the authority. In the NPC there was an extremely remarkable example of this kind. Shen, a model peasant in Shanxi Province, was given NPC deputyship since the first NPC in 1954 and was re-elected continuously till now (2013). Furthermore, she has been widely known in China not only for her extremely long tenure, but also for the fact that she had never voted against in any votes. A recent satire perfectly shows her unconditionally obedience:

> *She agreed the great leap forward movement, she agreed the establishment of People's Commune, she agreed the CR, she agreed to purge Liu and Deng, then she also agreed the termination of the great leap forward movement, she agreed the abolishment of People's Commune, she agreed the termination of the CR, she agreed to reverse the verdict for Liu and Deng – she is in the NPC simply because she agrees everything.*[5]

It is reasonable to claim that a deputy of this kind would largely be the supporter of the two Marxist tenets as they consisted of the authority's basic ideological identity. This claim is also confirmed by the interviews: two interviewees who were the most firm believers in the vanguard enlightenment consciousness were both model workers.[6] Something also noticeable in the 1980s was to award outstanding enterprisers by giving deputyships. The interview with a celebrated private entrepreneur who has been a NPC deputy since 1983, confirms that the deputy of his kind would try everything to show their loyalty to the authority and to avoid any conflict with it except on detailed matters that may significantly jeopardise their own interests.[7]

The third and the most important criterion in the 1980s was the above discussed allocating seats for the purpose of positive discrimination. Both primary and secondary evidence clearly suggests that in the 1980s there were many deputies still being selected

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[5] This satire is widely cited by electronic articles and is particularly popular in many blog or twitter articles. However, its origin is difficult to track. For articles citing it, see, for example, Pengan Zhou, "Shen's political miracle damages the NPC's authority (Shen jilan de zhengzhi shenhua sunhai le renda quanwei)", in http://www.21ccom.net/articles/dlpl/szpl/2013/0201/article_76365.html (accessed 03-05-2013).
[6] Interview: 18-10-2011; 27-10-2011.
[7] Interview: 02-11-2011.

for this purpose. Although the specific focus of the allocation of seats differed from the 1950s (see table 11 in chapter seven and table 12 below), it is worth stressing that the difference did not change the fact that deputies of this kind would obediently follow the intellectual ideas of the party for their lack of adequate knowledge and training to independently fulfil deputies' responsibilities.[8] For ethnic minority deputies, being passive and subordinate for lacking knowledge and skill were even more remarkable. As an important source of primary evidence, Yang's documentary writing provides several examples; a typical one writes:

> *In front of me is a peasant of Yi (one of the ethnic minorities in China) who rarely goes from the mountains in which people are almost isolated from outside world … He cannot understand those NPC documents at all because he cannot read Chinese language. When he first saw those documents, he behaved just like seeing the train at first time when he thought it was a steel monster.*[9]

However it is noticeable that pursuing a professional coverage, instead of class representativeness (stressing only deputies' proletarian background), at the same time opened doors to those who were previously accused of belonging to the inimical classes. Perhaps its most profound impact to the NPC functions was an increase to the number of well-educated intelligentsia in the NPC (see also table 12). Its effects will be discussed in the latter part of this chapter.

Table 12: *Number and proportion of intelligentsia deputies and ethnic minority deputies served in the NPC plenary session*

	Fourth NPC		Fifth NPC		Sixth NPC		Seventh NPC	
Intelligentsia	346	11.99%	523	14.96%	701	23.5%	697	23.4%
Ethnic Minority	270	9.4%	381	10.9%	404	13.6%	445	15%

Note: The 5th -7th NPC fall in the period this research focuses, the 4th is shown here as a control group

Source: NPCSC General Office, *Documentary Compilation*, p. 858.

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[8] Minqing Yang, *Great Elections in China (Zhongguo da xuanju),* (Changsha: Hunan Arts Press, 1989). p.84.
[9] Ibid. p. 79.

3. Intellectual implantation

Besides the deputy selection criteria, deputy training and education system also contributed to the shaping of the deputies' orthodox Marxist intellectual ideas as they generated an isolated space in which deputies can hear only the monotonous 'voice' of orthodox Marxism. Based on the author's survey of the deputy training material that will be mentioned in the subsequent analysis, its impact was massive and ubiquitous. To be specific, besides those materials aiming at providing deputies with a working guidance, the majority of the materials aimed to give deputy a firm belief in the advantages of the NPC system (including key agenda settings, institutional designs, and basic procedural regulations) that were claimed to have overcome the Western legislative tricks.

Journals and magazines edited and printed by the People's Congress' secretary organisations (normally by its 'general office') were regularly mailed to deputies. The survey of the journals of Jiangxi Provincial People's Congress (*Jiangxi Province People's Congress Work*)[10] circulated in the deputies in Jiangxi Province found no article taking a neutral position in discussing the Western legislative systems. To the contrary, articles accusing Western legislative systems can almost be seen in every issue, particularly in those printed in the last few years of the 1980s. One interesting thing was that those articles were repeatedly showing the similar defects of the Western legislative institutional settings, particularly a lack of democracy under the guise of general elections.[11] In doing so, they claimed that only in the Chinese legislative system could the people enjoy real democracy because this system secured the ruling of the CPC – a party of proletariat vanguard standing for the interests of the proletariat. These articles at the same time claimed that the proletarian vanguard does not need to be checked and balanced because it is the vanguard of the proletariat and would automatically stand for the interest of the proletariat.

More interestingly is those articles' 'convicting literary style': the abovementioned critiques on the Western legislative systems were completely based on classical Marxism doctrines; their basic logic was: it is wrong because Marxist classical writings said it is wrong. Such a literary style was quite similar to the use of language in a legal

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[10] *Corresponding of People's Congress Work (Renda Gongzuo Tongxun),* the journal published by the national level People's Congress, did not appear until 1994, this research choose an official journal of provincial People's Congress in the 1980s as an alternative.
[11] For example, Fan Lin, 'Triangular Division of Power Does not Suit for China (Sanquan Dingli Zai Zhongguo Xingbutong)', *Jiangxi Province People's Congress Work, Issue 8, Vol. 60, 1989, pp. 1-2.*

conviction. Articles adopting this literary style did not specifically discuss the institutions of Western legislative system. For example, the concept of the separation of three powers was cited as a ubiquitous character of the bourgeois legislatures and very few of them mentioned that the division of power was not a typical characteristic of the Parliamentary system. The survey made by author found no deputy training journal articles or training materials that carefully examined the special characteristics of the Parliamentary system that, as mentioned previously, could be a more suitable model in the NPC's institutional reform than the institutions of triangular division of power.

Another expression was the materials' selective ignorance to the institutional developments of the Western legislatures. This research argues that Marx's critiques of the defects of the Western legislative systems were largely correct during his age. The nineteenth century Western European legislatures on which Marx focused indeed had many defects as Marx described, that included aristocratic representation, franchise based on property, rotten boroughs, and election corruption. However, things dramatically changed in the twentieth century in which universal suffrage and many other reforms had made legislatures distinctive from what Marx had criticised. Using Marx's very early criticisms as tenets and dogmas to judge contemporary Western legislatures would definitely result in a conflict with empirical evidence; the only solution which those articles have adopted was to ignore the evidence, which means not to show the huge legislative developments happened in the hundred-year period.

There are interview questions designed to examine the outcome of the training. In answering to "*when you served in the NPC in the 1980s, which side did (or would) you represent when your opinion, the constituency opinion, and the CPC's wish were in conflict?*" five out of seven interviewees believed they obeyed the party's wish and helped the party to convey the decisions to the people. They did so because of the party's unquestionable authority.[12] Two respondents in those five even denied the existence of such conflict.[13] There were also two interviewees who said it depended on which side benefited the masses most. In answering to the question that "*in the 1980s did you ever think of any possible way of borrowing certain western legislative institutional settings?*" all of the interviewees said that they had never thought of that.[14]

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[12] Interviews 21-10-2011; 27-10-2011; 02-11-2011; 07-11-2011; 31-01-2012.

[13] Interviews 21-10-2011; 27-10-2011.

[14] Interviewees were surprised when they were told of the basic background information about western legislatures, such as that deputies are full time. It is conceivable that their knowledge about foreign legislative system in the 1980s was considerably little.

The reasons for the lack of concern were threefold: four interviewees stressed that socialist state cannot learn from the bourgeois' institutions or the bourgeois would get the opportunity to subvert the Communist ruling. One said she knew something about the Western legislatures, but believed that they did not fit for China's reality because the checks and balances may reduce efficiency. Still another two interviewees said it was because they completely had no knowledge about the Western legislative systems.[15]

The interviews partially confirm that the deputy's denial of borrowing foreign institutional designs largely came from the deputy training system that deliberately created a 'veil of ignorance'. In responding to the question as whether they heard or being told of anything about the Western legislative developments, all of them answered "*no*". The same result was also observed when they were asked about the difference between the Parliamentary system and the Presidential system.

Four out of seven interviewees could not distinguish the difference between the NPC and the CPPCC. Furthermore, although the interview question did not directly require them to identify and describe the three key political institutions (the party, the central government, and the NPC) and their relationship, at least two of them clearly showed their lack of basic knowledge to do so.

4. 'Independent thinking' deputies and their intellectual background

Both interviews and documentary evidence illustrate the existence of a very limited number of deputies in the 1980s whose attitude toward the NPC was less influenced by the official propaganda. The above discussion highlighted two interviewees whose response to some extent varied from the other five respondents. Their higher educational background can largely explain such diversity. These two respondents received tertiary level education and can be regarded as the intelligentsia. Specifically, one of the respondents was previously a lecturer and engineer, another one lectured in Chinese literature. They confirmed that in the 1980s they heard society-wide discussions about some liberal democratic thought, including the division of three branches of power, and seriously thought of its pros and cons. However, they finally believed that the NPC was a better system because it secured administrative efficiency;

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[15] One of the interviewee did not directly provide the answer; however, as the interviewee's talk contains so many misunderstandings of western legislative systems, she can be regarded as belong to this category.

simultaneously, they thought the NPC system would have had more development if the 'in-practice' institutional settings could *de facto* practice those designs stated in related organisational laws and the Constitution.[16] Clearly, because of the abovementioned deputy selection criteria, their dissatisfaction never went beyond the scope of orthodox Marxism.

5. NPC staff members

The NPC staff members were not given a task of influencing the institutional change. Instead, their primary task was to serve the deputies in fulfilling certain functions (e.g. staff of the law committee focus on providing suggestions to the Standing Committee deputies regarding the law drafts).[17] However, they influenced NPC institutional developments in two circumstances. Firstly, institutional innovations may be generated from the daily work of the staff members. Most of them were largely created unintentionally. For example, the law committee in the 1980s introduced several innovative procedural regulations in the draft making process, including inviting the participation of legal scholars and the law-making hearing. Those regulations secured that every new law was promulgated after a cogitative consideration, consultation, and discussion. Some of these attempts were testified to be effective and were gradually institutionalised. Secondly, staff members in the NPC's research section affiliated to the NPCSC General Office played a crucial role in the institutional development. This section was established after 1978 and was quite small at the beginning – consisting of less than ten staff; its size then dramatically expanded to 78 members.[18] Besides its routine responsibility such as drafting speeches and reports, and offering advice to the NPCSC's activities and processes, the Research Section has another crucial task of offering advice on the NPC institutional development.[19]

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[16] Interview, 26-10-2011.

[17] According to Zhao's research, the importance of the special committees and the working committees has surpassed its original 'adviser' role. Zhao and Zhang, *The Legislative and Electoral System of P.R. China*. pp. 111-12. Obviously, their greater impact in the NPC provided the staff members with a greater power in influencing the NPC institutional development.

[18] Cheng, Xiangqing. "Article Commemorating the Pass Away of Dingjian Cai (Renda Changweihui bangongting Yanjiushi Yuan Zhuren Cheng Xiangqing Huiyilu)" (Accessed 07-02-2011), http://politics.gmw.cn/2011-04/08/content_1805996.htm. Cai worked in the Research Section since 1985 and actively participated in the developing of the NPC institutions. Cheng, the author of this article, is the former chairman of the Research Section.

[19] Ibid.

Because of the same prerequisite of selection, staff members must be, or at least pretend to be, believers in the orthodox Marxist intellectual ideas. However, considerable number of attitudinal diversities can also be observed from the staff members. This research attributes them to staff members' differing educational background. Taking the example of the Research Section's three most active members whose works have been widely published and to some extent cited as guiding principles, Cheng received his B.A. in Chinese literature in 1961 from China's cutting edge Beijing University; Liu received his B.A. in Economy in 1960 from another outstanding Renmin University; Cai joined the Research Sector for his distinguished academic reputation in 1986 (at that time Cheng had been its director) and prior to that he was Bachelor of Law since 1983 and Master of Law since 1986, both degrees were received from two of China's top universities. Their educational background perfectly exemplifies a bifurcation of the NPC staff members. On the one hand were Liu and Cheng whose education was received before the CR, which equipped them with a firm orthodox Marxist consciousness. Furthermore, their majors were not legal political studies, and consequently, they knew little or refused to accept new political-legal related intellectual ideas in the 1980s. On the other hand was Cai who received his tertiary education in the 1980s and majored in law. Considering the 1980s' intellectual importation discussed in chapter six,[20] it is not very surprising to see the following diversity between the work of Cai and that of Cheng and Liu.

Roughly speaking, both of their works focused on the NPC institutional developments; however, their works had a different logical starting point. In the works of Liu and Cheng, the logical starting point was the advantages of Marxist legislative doctrines and the corresponding Western legislative trick. Based on which, they scrutinised the NPC institutions and illustrated that there were some places where institutional designs failed to practice the Marxist legislative doctrines. The conclusion of their works was normally to require corresponding institutional developments in responding to certain functional demands.[21] To the contrary, Cai's work to some extent showed his struggling between two intellectual backgrounds. His works normally focused on refuting the idea that certain NPC institutional developments were taboo as they would turn the NPC into a bourgeois legislature. He showed that certain taboos were absurd as they indeed had

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[20] It is worth mentioning that there was an almost ten year abeyance of laws and politics teaching and researching in the CR, which was not recovered until 1980.
[21] All of Liu and Cheng's works that will be mentioned in the following studies of this chapter took that logic.

their origin in the early classical works of Marx, Engels, and Lenin. Based on which, Cai claimed that certain bourgeois institutional designs, such as universal suffrage, direct elections, and election campaigns, can be *borrowed without any hesitation*".[22] In his most radical language, he pointed out the absurdity for someone to deliberately overlook the precondition that in Western regime the ruling party is elected while stressing only that the ruling party determines the personnel decisions of the government ministers and premier by controlling over the legislature. He believed that in doing so, the abnormal thing that the party 'kidnapped' the legislature was legitimised. He also noted that in doing so, was a deliberate betrayal of Marxism for "*denying elections and democracy.*"[23]

Cai's work clearly illustrated that he could not challenge two Marxist tenets although his knowledge about the Western political systems allowed him to compare the two systems from a largely neutral stand. Sometimes he was in a dilemma between keeping basic NPC institutional designs and importing those from outside.[24] Consequently, for Cai, only those importations not conflicting with the Marxist doctrines were advocated. Moreover, it is worth mentioning that in the 1980s the NPC staff members of Cai's type were few. At the same time, because of their lower status (these people had just graduated from universities) in the stratified bureaucratic NPC organisation, their influence was little. The interview with a former provincial People's Congress Law Committee head partially confirmed that the majority of the NPC staff members in the 1980s belonged to the type of Liu and Cheng. The interviewee mentioned in the interview that the provincial Standing Committee was established in 1979 in order to enhance the power of provincial People's Congress. As a completely new institution, its staff members, particularly the head of each committees and affiliated organisations, were largely appointed by the provincial government. More importantly, most of the newly appointed staff member had their previous job as secretaries of provincial government's general office (it explains why senior NPC staff members were normally majors in Chinese literature rather than legal politics).[25]

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[22] Cai, *Institution of the Chinese People's Congress.* pp. 172, 177.
[23] Ibid. p.361.
[24] The salient example is his embarrassment between the NPC's supreme position that can and should oversee the judicial branch and the Western principle that the judicial branch should be independent. Dingjian Cai, "On Perfecting the Legal Supervision Institutions of the People's Congress System (Lun wanshan woguo renda de sifa jiandu zhidu) " *Law Review (Faxue Pinglun)*, no. 3 (1987).
[25] Interview, 18-10-2011. The interviewee's response is based on his experience of the provincial People's Congress. The situation the interviewee described might have highly possible happened in

As a brief conclusion to the study of this section, the intellectual background of the deputies and staff members in the 1980s can be allocated in the range of B-C of the spectrum, which means they were believers in orthodox Marxism with strong nationalism essence.

II. Decision making

Based on the basic understanding of the intellectual background of this group of influencers, this section highlights several key characteristics of the NPC deputy and staff members in the decision making related functions and institutional designs. Those characteristics are then explained from the intellectual perspective.

1. Deputies' sense of not being a decision maker

As most of the previous NPC research seems to suggest, the short-term and powerless NPC Plenary Session was the primary reason for the NPC being called a 'rubber stamp'. Such a weakness was particularly salient when almost three-thousand deputies raised their hands to give assent to a bill, a critical issue, or a decision on personnel. However, previous research did not pay attention to individual deputies: when those deputies raised their hand to show assent at all times, what did they think? Did they feel guilty of being so passive and inactive? If not, why?

The interviews confirmed that deputies were told by the authority that decision making was their responsibility; they were also told of the NPC's four functions that, in the official rhetoric, included the law-making and assent giving. However, one interesting finding of the interviews was that deputies focused primarily on the representative function while overlooking the decision making function. In answering the question:

> *"Someone believes that the size (number of deputies) of the NPC should not be reduced to secure representativeness; someone believes the size should be reduced to facilitate legislative debate, which side did you think to be correct in the 1980s; were there any solutions about this conflict?"*

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the NPC because of the same historical background – the PCs of all five levels were all suspended during the CR and re-established in the 1980s.

The interviewees showed their preference in a large sized congress for the favour of a high representativeness. One respondent said *"I was a common deputy, I think I was selected to represent the people, law-making is an activity requiring knowledge and technique that a common deputy cannot understand"*.[26] This interviewee was shocked when being told that in the Western legislatures deputies are full time in ensuring sufficient time to focus on deputy related works (including hearing the 'voice' of the constituency, the political party, and getting sufficient information in order to vote in the legislature). This interviewee unequivocally opposed that setting and said that "*what common deputies need to do is to gather grass roots voices in their daily works and send them to the NPC to facilitate decision making.*"[27] Another interviewee expressed the same idea that "*whether a draft law or decision was discussed is not a matter of importance, all drafts and decisions will be decided by poll, in which deputies make decision.*"[28]

This characteristic can find its root from the deputy's specific intellectual ideas. In Chinese language, the literal meaning of the term 'deputy (Daibiao)' is 'representative', not 'legislator'. Similarly, the literal meaning of the NPC is 'people's representatives' conference'. Both two terms do not involve any sense of decision making. Lacking consciousness of being a decision maker was arguably due not only to the terminology but also to an intellectual idea having a long tradition: in China's thousand year monarchical society, the masses or the deputy of the masses had never thought of making decisions because decision making process has been largely insulated from public access and participation. This history resulted in the abovementioned authority crisis and the Chinese people's 'inherent' demand for an authority to make decision. Those intellectual roots may to some extent explain why deputies believed that decision making was not a business of common deputies.

The direct expression of that consciousness can be witnessed from their use of the term 'common deputy' and its corresponding 'senior deputy'. The respondents used those two terms to distinguish deputies of the Plenary Session and the Standing Committee. To the contrary, there has never been any organic law or regulation that established or confirmed such divisions: according to the NPC Organic Law, the Standing Committee meant it is the standing committee of the Plenary Session during the latter's off-session

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[26] Interview, 21-10-2011.
[27] I.bid.
[28] Interview, 07-11-2011.

period. Furthermore, the Standing Committee should report to the Plenary Session about their work every year. Those designs meant the Standing Committee should be in a lower position, instead of a higher position, than the Plenary Session.[29] However, for deputies, it has been almost sub-consciousness that any political institutions should be hierarchical. They believed that as a 'normal' deputy, they were not qualified enough to make decisions that should be the business of the NPCSC deputies.

Besides deputies' consciousness of not being qualified enough to make decisions, it must be stressed that the CPC's vanguard consciousness significantly strengthened the traditional need-for-an-authority consciousness. To be sure, with the end of the CR mania, particularly the purging of the Maoist Marxist deputies from the NPC, deputies had more willingness to behave independently. However, it did not change the fact that following the decisions of the CPC as the vanguard of the proletarian class was still the deputies' most commonly seen attitude in the 1980s. To be specific, the deputies' such attitude came from the CPC's two successful strategies. Firstly to show its competence of making decisions and secondly, to let deputies realise that all its decisions are made for the people's interests.

The first strategy was effective because the CPC obtained a high level of negative legitimacy.[30] The interviews confirmed that deputies' willingness to follow and obey party's decisions derived from the party's high level of negative legitimacy. This research argues that because of their deputyship, NPC deputies were the beneficiary of the 1980s reform. The benefits at least included their remarkably increased living standard and their increased status in the stratified and bureaucratic system. Such a huge change of living standard and improvements of social and political status made them realise that the CPC was an unquestionably competent decision maker. Jing's example is quite salient. She was an orphan before 1949, after the establishment of the CPC regime she was adopted by a government-run orphanage and became a spinner in a textile factory. She was selected to be a deputy in 1983 not only for her outstanding work, but also for her personal experience that exemplified the Communist new China's 'merit' that even an orphan could be a 'master of country'. Furthermore, being a model worker also significantly increased her political, social, and economic status. In the interview, she expressed a strong consciousness of being loyal to the party's decisions.

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[29] 1982 Constitution, Article 62: 2; 1982 NPC Organic Law, Article 2: 34.
[30] The 'negative legitimacy' concept is discussed in chapter six.

The success of the second strategy came from the party stressing the class-nature of society. Although the CR tragedy has made it impossible for the party to keep stressing about an irreconcilable class struggle, the party in the whole period of the 1980s still stressed that society was class-based and that the CPC stands for the interests of the proletariat.[31] Consequently, a deputy's immediate response in making decisions was to let the party decide. Specifically, their belief in the party's vanguard position in a class-based society convinced them that (1) the party makes decisions from a macro-level perspective, individual deputies cannot see that far, so once an individual decision and the party's decision on certain issues are in conflict, deputies must be wrong; (2) although the party's decision cannot always be correct, it should be trusted because at least the party fights for the interests of the people. These two senses can be ubiquitously witnessed in the interviews; one interviewee recalled his experience in the Provincial level People's Consultative Conference:[32]

> *We discussed personnel decisions under the leadership of the party; seeing the list, someone thought they have no sufficient time to consider it. Moreover, no one had the wish to express views even if they had questions. It is reasonable: the majority of us knew little about those people in the list, they cannot make decisions on the basis of that, so we decided to trust the decision made by the party, trust the provincial party committee.*

> *There had been a deputy who dares speaking, he wrote something he heard about the candidate who was selected by the party to be vice provincial governor; however after investigation those things are not true. Understandably, he was punished. Having this experience, no one dared speaking. Because we cannot investigate by ourselves, so we trust the party committee.[33]*

Yang's book shows also several examples of this kind:

> *I have little information on the nomination of the people in the list; I trust the party's central committee and the NPC of last year. This list has been scrutinised and under consultation for a long time, it is part of the macro*

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[31] See the power holders' intellectual background in the 1980s in chapter seven.
[32] The interviewee became vice chairman of Provincial People's Consultative Conference in 1993; prior to that he was a NPC deputy in the 1980s.
[33] Interview, 31-01-2012

level personnel arrangement, I believe this list is appropriate; in another words, I approve not the bill itself but the party's decision.[34]

Election (polling for bills regarding personnel) cannot be despised or it might cause big troubles, and foreigners may blame us. Election must take the interests of the whole into account for the reason of peace and unity. If we all vote against or abstain for our own reasons, the society would run into chaos.[35]

Besides these citations, the sayings of Shen, the abovementioned deputy who has served in the NPC since 1954, also showed that the reason for her to never veto any bill was because of her belief that the party represents the people's interest.[36]

It has to be stressed that a significantly higher proportion of NPCSC deputies, compared with the plenary session deputies, knew well about the NPCSC's crucial function of decision making. According to the interview with a NPCSC deputy, Standing Committee deputies in the 1980s were of two kinds: on the one hand were those extremely passive deputies who were largely veterans and retired senior officers. Deputies of this kind had almost no wish to make decisions. More surprisingly, they even did not attend the meeting. This finding directly contradicts pioneering research labelling the NPCSC as a very active decision making arena.[37] On the other hand were those comparatively active deputies. This kind of deputy understood that the primary reason for increasing the power of the Standing Committee was to strengthen the law-making function that would have contributed to the increase of law-making quality and quantity. Evidence also shows that particularly for those NPCSC members who were legal experts or had expertise in the related fields, they did not have the feeling of not being qualified to make decisions.[38] However, their active engagement did not considerably change the fact that their work was under the leadership of the party.[39]

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[34] Yang, *Great Elections in China*. p.33

[35] Ibid. p. 33.

[36] In an interviewing article, Shen said that "*As a member of CPC and NPC, I have to be responsible to the Party. In the votes I must take into consideration the 'general arrangements', I cannot make decisions on my own basis*". In "interviewing with Shen Jilan (Duihua shenjilan)", *South Reviews (Nanfengchuan*g), issue 2, March, 2006. p. 21. See also "Shen Jilan becomes a NPC deputy for eleventh time", in Xinhua News Agency Website: http://news.xinhuanet.com/local/2008-02/04/content_7563044.htm (04-02-2008); last accessed 07-03-2011.

[37] See the review of the research on the NPC's structural development in section one of chapter two.

[38] Ping Wang, "Song Rufen: Witness of Chinese Economic Legislations (Song Rufen: Zhongguo Jingji Lifa Jianzhengren) " *The People's Congress of China (Zhongguorenda)*, no. 16 (2011); Lina Xia, "Gu Angran: To Be a Legal Scholar by Legislating Practice (Gu Angran: Lifa Shijian Zhong Chengzhang De Faxuejia) " *The People's Congress of China (Zhongguorenda)*, no. 14 (2011).

[39] As chapter seven has mentioned, even for Peng Zhen, the primary reformer of the NPC reforms,

Compared with the Plenary Session deputies, the NPCSC deputies' similar firm acknowledgement of the party's vanguard position meant they could not be more independent than that of the Plenary Session deputies.

2. The thinking of the discontented deputies

Although the most commonly seen NPC deputies were passive and inactive in making decisions, there is also evidence showing that some deputies discontented with such passivity in the 1980s. Such dissatisfaction came not from their clear consciousness that deputies should make decisions independently but from their firm orthodox Marxist intellectual positions. They firmly believed that the Communist legislature should be a place where deputies under the party's leadership make decisions for the interests of the people. That was the reason why some deputies felt so disappointed when they realised that the party's top leaders attempted to deliberately 'kidnap' their decisions by providing them with prejudiced or fake information in the NPC. The feeling of disappointment was particularly strong when they saw their decisions based on such information jeopardised the interests of the people.

In the interviews, three interviewees expressed their dissatisfaction at approving the bill on the building of the Three Gorgeous Dam.[40] One interviewee complained that:

> *The Dam project was so hasty decided! Before polling, all of the reports we received were showing advantages of the Dam and how negative effects can be under control. I clearly remember that before polling, all of deputies were scheduled to attend an exhibition about the project; all of the contents in the exhibition were the advantages of the dam. To be frankly, I approved this bill, but I felt dissatisfied – I was induced to make decisions!*[41]

Another interviewee expressed similar sentiments on approving the Dam for the decision was made not on the basis of his own consciousness but on the authority's wish.

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he was never tired of stressing the Party's unquestionable leadership on the NPC works.

[40] The Three Gorgeous Damp was built on China's most crucial river. The Bill of this project stimulated intensive debate in the NPC since its introduction in the 1980s. After several years tabling, this bill finally passed in the 1991 NPC plenary session. However following the growing number of great environmental disasters that are believed to be the result of this project, the NPC's decision on this project received growing number of criticisms.

[41] Interview, 26-10-2011.

He felt upset for he was not sure whether he would disapprove the bill if unprejudiced and sufficient information was provided.[42]

Primary sources show that, for the same reasons, some deputies also felt upset for being not able to reasonably consider the issue of giving assent to personnel decisions. Someone even went further to complain about the party whip in personnel decisions:

> *To be frank, I do not know why I supported this; whatsoever, no matter what I decide, candidates (means governmental officer candidates, they should win congress election) must be elected. Election is merely a nominal process, everyone knows that.*

> *Why I support this? Because I am a member of the CPC; otherwise I would vote against it. Do not tell anyone of that in your book!*[43]

It is noticeable that deputies showing directly their dissatisfaction can be only observed from the issues linked to the assent giving function; no evidence can be observed showing deputies dissatisfied at their passivity in the law-making process and attempted to strengthen the related functions. It is arguable that the reason for those discontented deputies to not improve the accessibility of the relatively closed law-making system was their acknowledgement of the idea that law-making was, compared with the assent giving function, a technique requiring special training and sufficient time. This assumption can be partially justified by the fact that in the interviews those who expressed dissatisfaction at the Dam bill also agreed that law-making was a crucial work and should be seriously dealt with. Furthermore, they frankly admitted that they did not have time and experience to do so.[44]

3. Corresponding institutional designs of the deputies

The discussion above reveals an often ignored fact that NPC deputies, except certain NPCSC deputies, were quite inactive in decision-making. This finding partially explains one of several widely noticed imbalances in NPC institutional development, namely the

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[42] Interview, 31-01-2012.
[43] Yang, *Great Elections in China*. pp. 33-34.
[44] Interview, 26-10-2011; 31-01-2012.

significantly faster development of the NPCSC's law-making institutions than that of the Plenary Session.[45]

As abovementioned, the majority of the NPC's plenary session deputies felt not guilty in making decisions passively and inactively. Its direct result was their low functional demand for the decision-making function. Specifically, whether the NPC was an appropriate place where deputies could actively express their opinions on making laws and giving assent was not a matter of importance. Therefore, they had no wish to make and advocate new institutions that may enhance the decision-making functions. Based on the indicators shown in chapter three, the most salient expression of deputies' low decision-making functional demand was the non-existence of deputies' institutional designs aimed at increasing viscosity. As chapter five has shown, the NPC's viscosity in decision making reached was almost not exist during the CR period due to the negative effects of Maoist Marxism. However, as the result of the deputy's passivity to promote related institutional developments, NPC's low viscosity remained largely unchanged in the 1980s.[46] A survey of deputies' PMBs during 1978-1989 found no bill aiming to increase legislative viscosity by promoting related institutional developments.[47] The only few cases shown in Yang's book were the deputies' grumbles on having insufficient institutional support for the assent giving function. For example, deputies complained that they received a candidate list containing all names and they could not express his opposition to any single name in that list (they can either approve or veto the whole list). Another one complained about the scandal that Mr. Wu, one of the 'selected' candidates, deliberately resigned from the election for age reasons after being told that he was selected. This scandal raised complaints for showing that the candidate nomination process was so closed that even candidates themselves would not be told before being selected.[48] The same situation could also be witnessed in the interviews. Two deputies showing dissatisfied at lacking information, or information being prejudiced, in the decision making process also merely expressed their dissatisfaction in the interviewees. To the contrary, in the 1980s they did not openly express any of such

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[45] O'Brien confirmed in his book that the NPC's law-making function was active. However this conclusion is tenable only for the Standing Committee. Interestingly, perhaps the author did not notice that almost all pieces of evidence he cited to show the NPC's high activity come from the NPCSC but not the Plenary Session. See O'Brien, *Reform without Liberalization*. pp. 158-64.

[46] O'Brien believes that viscosity in the 1980s was "*considerable*", see Ibid. p. 163. However, this research argues that it was true only for the Standing Committee.

[47] Deputies' PMBs were not published in the 1980s, the author's survey is based on the secondary documents such as the NPC General Office's annual report on processing PMBs, which cannot guarantee the completely non-existence of the cases.

[48] Yang, *Great Elections in China*. p. 33.

feeling or took any action to institutionally ensure that information provided was unprejudiced and sufficient.

The NPCSC deputies in the 1980s understood well about their respected role in decision-making and therefore had no wish to challenge the CPC's leadership. Its result was to 'respond' instead of 'demand' the law-making function. In other words, they saw themselves as assistants in helping the leaders to make better decisions. This characteristic was perfectly echoed by the fact that the NPCSC in the 1980s was more active in the law-making function than assent giving. The reason for that contrast was that the Standing Committee can be an assistant in engaging in many law-making related activities (e.g. gathering law-making related information, perfecting the draft). To the contrary, the assent giving was merely either a 'yes' or 'no' question, in which any changes, that included delaying giving assent, or vetoing a decision, would be substantial changes that were not 'appropriate' to be done by an authority's assistant.[49]

Meanwhile, the NPCSC deputies' assistant role reduced their importance in the law-making process, such as making substantial changes to a draft law. Song's personal recollection of his experience of engaging in the NPCSC's law-making process shows that almost all of his suggested changes in the draft law were minor changes[50] or changes in literal style.[51] His avoidance of making any critical amendment, as well as the fact that there was no draft being vetoed in the 1980s, were the salient institutional outcomes of the NPCSC members' 'seemingly remarkable' demand for the law-making function.

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[49] Conference schedules of the NPCSC in the 1980s show that discussion phase was scheduled only for law bills; hearing governmental report on certain activities (e.g. Premier's visit to foreign country) and polling on governmental personnel decisions had no discussion phase. Specific conference schedule is available in NPCSC General Office Research Section, Documentary Compilation, pp. 783-801.

[50] For example, Song noted that in Food Sanitary Law Draft an article stated that "*food factory should be rat and beetle free*"; however, it was not possible and unrealistic to demand rat and pest free at this stage. He then suggested an amendment that "food factory should be equipped with rat and pest extinction equipment". Rufen Song, *A Recollection of Engagement in the Legislation Works (Canyu lifa gongzuo suoji),* (Beijing: Legal Press, 1995). Book 2, pp. 1-5. The NPCSC's non-circulated compilation of deputies' comments on law drafts I obtained by certain channel further verified the sayings of those secondary sources. See "Reviewing Comments of the Eleventh Meeting of the Seventh NPCSC on the Draft Law Amendments of Sino-Foreign Joint Ventures (Qijie Quanguorenda Changweihui Di Shiyi Ci Huiyi Shenyi Zhongwai Hezi Jingying Qiye Fa Xinzhengan Caoan)", Non-circulating conference material circulated at the Third Plenary Session of the Seventh NPC, vol. 2 (1990).

[51] For example, Song, *A Recollection of Engagement in the Legislation Works*. pp. 10-14.

4. Staff members' rule by law concept and its institutional outcome

This section confirms NPC staff members' strong desire for increasing the NPC's decision making function. Meanwhile, it argues that the 'rule by law concept' to a large extent shaped their specific designs of the related institutions, by which the NPC's decision making related institutions got an imbalanced development.

The staff members' rule by law concept was responsible for two remarkable particularities of the NPC's decision making related institutional developments, both of which were important factors for the NPC's imbalanced development (see chapter one). First was the executive and the party's large-scale involvements in the legislative process. It has to be said that the decline of the legislature's decision making power and its transfer to the executive has been a universal trend; however, that decline in China reached in an unprecedented manner – the legislature in China had *de facto* no power of initiating a decision or law. This research claims that the related pioneering research largely ignored a fact that the NPC staff members, particularly the members of the law committee and the NPCSC's legislative working committee who were in charge of making laws, did not see it as an abnormal thing. This often ignored situation is easier to understand considering staff members' acknowledgement of the rule by law concept that largely equated laws to governmental regulations. In the interview with a former provincial People's Congress Standing Committee's law committee director, he expressed his pride in helping government to increase the quality of draft laws. At the same time, he did not feel it abnormal that the legislative arena was not in the People's Congress but in the government. Based on his response, draft laws, before being sent to the People's Congress, have been intensively debated in the government. His career as a Law Committee director saw only one case that governmental bargain did not reach a solid consensus and the debate continued in the legislature. Surprisingly, he saw this case, instead of other cases, to be abnormal.[52] The rule by law concept also affected specific institutional designs made by staff. An example was the establishment of the 'annual coordination meeting for the making of legislation plan (niandu lifa xietiao hui)', which was an institutional innovation in the 1980s advocated, and latter institutionalised, by the law committee. In this meeting each of the related governmental organisations reported their demands for new laws, based on which the law committee

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[52] Interview, 18-10-2011.

made annual legislation plan in accordance with priorities. The criterion of judging priorities was how urgent it was demanded by the government organisations.[53]

Second and more important, the rule by law concept should also be responsible for the law-making procedural's lack of institutionalised 'channels' conveying public opinion into the law-making process. In other words, the related institutional designs under its impact normally focused on creating an 'exquisite designed game, but limited number of players'.[54] The reason was that the concept focused on the quality and quantity of the making of new laws and overlooked the fact that laws should be made based on public opinion. This finding links the rule by law concept to the fact that the strengthening of the law-making function did not help increase democracy and participation of the law-making process. The specific expression was twofold: on the one hand, staff members were asked to create a refined law-making body to increase the quality and quantity of the making of administrative regulations; on the other hand, because of the rule by law concept, increasing participation in law-making was not their concern.

To be sure, only by creating a strong and active Standing Committee in which laws are made 'deliberatively' by a small group of law makers could institutionally fulfil their demands for improving the quality and quantity of the making of new laws. Empirically, it can be observed that all of the staff members had a particular concern with the institutional developments of the Standing Committee and the Law Committee. According to Cai, one of the greatest achievements of the sixth NPC was the institutionalisation of the law-making process. The six detailed law-making processes shown by the author illustrated the Standing Committee's priority than the Plenary Session and its key role in scrutinising or modifying (and even tabling) draft laws.[55] There were also examples showing that even for those 'basic laws' that should be made in the Plenary Session were still made in the Standing Committee.[56] Moreover, some staff members attempted to make the NPCSC a more effective arena in which draft laws could be deliberatively debated rather than simply being given assent by the wishes of

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[53] Interview, 18-10-2011. It is also confirmed by Tanner, "Organizations and Politics in China's Post-Mao Law-Making System." pp.57-58.

[54] For related discussions, see Peerenboom, *China's Long March toward Rule of Law*. pp. 244-48.

[55] Dingjian Cai, "Twenty Years Historical Changes of the NPC Legislation (Ershi Nian Renda Lifa Ji Lishixing Zhuanbian)," in *Twenty Years NPC Developments and Reforms (renmindaibiaodahui ershinian fazhan yu gaige)*, ed. Dingjian Cai and Chenguang Wang, (Beijing: Procuratorate Press, 2001).

[56] One example is the making of "General Provisions of Civil Law (Minfa tongze)" during 1979-1986. The process shows that for such a vitally important basic law, the drafting and debating stage were primarily in the NPCSC, the Plenary Session just gave assent in 1986. See Song, *A Recollection of Engagement in the Legislation Works*. book 1, pp. 22-27.

the leadership. Those institutional developments included such as the introduction of the second reading process and the use of an electronic voting system (buttons pressing instead of hands showing in the polling).[57]

However, at the same time, it was not changed in the 1980s that the legislative arena was largely closed to public access. In the previously mentioned interview with the former director of the Provincial People's Congress Law Committee, the interviewee was asked: "*why did you think it is reasonable and acceptable that laws were made in a closed system and the masses were less able to participate*?" his explanation showed obviously his belief that the law-making process only adjusts the conflict between different governmental departments, thus hearing public opinions was not a matter of importance:

> *There was no conflict of local interests and the overall interests; there was also no conflict of different regions. The conflicts I could see was of different professions and systems, its expression was that governmental departments bargaining in the drafting stage. The existence of such conflict was quite understandable because through the making of new laws certain departments may get more power while others may lose.*[58]

The above quote is supported by documentary evidence. According to the annual working report of the NPCSC, the primary aim of the law-making related institutional changes in the 1980s was to ensure that the law-making process was better in serving economic development, while increasing participation was not.[59] This understanding echoed the empirical evidence that the normally seen new institutional innovations in this area were those making the process more 'scientific' (e.g., law experts' legislative consultation meeting) rather than those making the process more transparent (e.g., only very few fundamental law drafts, such as the criminal code, were published in the media and the public were allowed to make suggestions by letter writing).

Moreover, staff members' 'rule by law' consciousness may reduce the effect of certain institutional designs aimed at increasing participation in law-making. The salient example is the NPC Law Committee's indifferent and unconcerned response to the

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[57] Daohui Guo, *Law-making Institutions in China (Zhongguo lifa zhidu),* (Beiijing: People's Press, 1988). pp. 81, 83.
[58] Interview: 18-10-2011.
[59] Primary evidence comes from the annual *Standing Committee Working Reports* made in each NPC Plenary session conference. Data is accessible in *Documentary Compilation*, pp. 508-51.

comments of Plenary Session deputies on certain draft law. In its *Explanations to the NPC Deputies' Comments on the Basic Law of the Hong Kong Special Administrative Region (Draft),* the Law Committee listed eighteen deputy comments (This document listed nineteen issues. However issue number six was an inquiry, not a comment); however none of those comments was accepted by the committee. Instead, the Law Committee clearly rejected thirteen comments for various reasons and illustrated that the other five comments were unnecessary and repetitive because relative regulations had been made in the draft.[60]

III. Representation

The widely adopted structural perspective largely resulted in an overlooking of revealing how the representative function was understood by deputies who were the direct 'practitioners' of that function. Based on primary evidence, this section claims that the orthodox Marxist intellectual background gave the deputies a unique understanding of this function, which made many particularities of the development of the related functions and institutions more understandable.

1. Intellectual reason for the lack of remonstrative deputies

Chapter five showed that a lack of remonstrative deputies in the 1954-1956 NPC had its intellectual foundation in orthodox Marxism. Previous chapter also illustrated that after 1978, orthodox Marxism re-emerged in China and were accepted and recognised by the NPC deputies and staff members. Both of these suggest that the rise of orthodox Marxism may explain the related institutional flaws that had been mentioned by the pioneering researchers shown in the review chapter.

The explanatory capacity of orthodox Marxism is largely confirmed by the primary evidence showing that deputies in the 1980s, including those deputies dissatisfied with certain existing institutional designs, firmly believed in the CPC's vanguard position. Such a belief not only legitimised the CPC's role of an indisputable policy maker, but also equated the NPC representative function to the role of an 'information broker'. Primary data also shows that such a belief was on the basis of their orthodox Marxist

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[60] NPC Law Committee, "Summary of the Deputy Comments on the Draft Hongkong Special Administration Region Basic Law (Guanyu Quanguorenda Daibiao Dui Xianggang Tebie Xingzhengqu Jibenfa Caoan Tichu De Xiugai Yijian De Shuoming)", Non-circulating NPC Conference Material (31-03-1990).

understandings of the conflict of interest. To be specific, on the one hand, so far as the evidence observed, deputies no longer believed in a unified strata of 'people' constituted by the proletariat and other alliance classes. Consequently, they did not believe in the non-existence of society-wide interest conflicts. However, on the other hand, they still firmly believed that interest conflicts should be coordinated by the vanguard CPC, which *de facto* meant that conflicts should be coordinated by the central power holders (as previously shown, deputies believed that party would not go against the interest of people, which was the prerequisite for the party being regarded as a coordinator).

For deputies, the most remarkable expression of the consciousness equating the role of information broker with the representative function was their castigation of the Western legislatures, in which deputies, representing the constituency interests, served to the protection of the constituency interests. In response to an interview question testing their knowledge about NPC functions, all interviewees showed their concern with the representative function. However, they thought that this function meant that deputies should *understand* grass roots affairs and *reflect* them to the central decision maker. Correspondingly, all of the seven interviewees, including two of the abovementioned deputies who showed to some extent dissatisfaction at the institutional settings in the 1980s, expressed their resentment at the representation related institutional settings in Western legislatures. Two interviewees expressed their strong resentment at what happened in the Taiwanese legislature in which deputies physically fought in the Congress with fists and throwing of projectiles such as shoes. In the same legislature, someone jumps onto the table; the opposition party boycotts congress meetings by locking the entrance to the Congress Hall. They believed that such a chaotic legislature was a great misery to the Taiwanes people, because it made the regime unlikely to have a solid, quick responding, and strong political power.[61] In the interviews the interviewer tried to tell those deputy interviewees that such chaos was indeed a positive sign of a solid representative function because deputies in Taiwan intentionally fought in the congress to show the voters watching the live broadcasting of the meeting that they work hard to fight for the voters' interests.[62] However, the interviewer's explanation got no positive response because the interviewees firmly believed that a harmonious

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[61] Interviews, 21-10-2011; 26-10-2011.

[62] My appreciation goes to Prof. Emerson M. S. Niou from Duke University. In his lecture in Shanghai in 2009, he gave this idea in responding to the same question.

political order and a unified central power are the most important things rather than deputies' accountability.

For staff members, particularly those in charge of deputy training, they held the same notion that only in Communist legislature the party represents the people. Such a consciousness meant that deputies should not argue with central decision maker for regional and constituency interests, as decisions made by central power holders, even damaging regional interests, aimed to increase the benefits of the masses.[63]

Documentary evidence shows that staff members' abovementioned consciousness directly inhibited the advocating and institutionalisation of innovative institutional designs encouraging deputies to be remonstrative. Since staff members acknowledged the principle that interest conflicts should be solved under the leading and coordination of the vanguard party, whether a deputy fulfils the representative function, according to staff members' understanding, was decided not by accountability but by how well they acted as an information broker. To be sure, under such circumstance, staff members would not encourage any deputy to strengthen deputy-voter ties because their priori was not to hear the demands or grievances of the voters, but to collect useful information. In *Handbook of People's Congress Deputy*, a pamphlet that was published to provide deputies with basic activity guidance, the authors told deputies that they should (1) contact their people in the constituency in order to convey the party and State's 'solicitude' to grass roots; (2) explain to the grassroots masses the reason why certain PMBs were not properly handled and make sure the masses understand the difficulties of the Government; (3) help the Government of corresponding level by conveying the People's Congress's decisions to the grassroots masses. More saliently, the book warned deputies not to intervene in the works of the executive and the judicial authorities. It also told deputies not to directly deal with local people's grievances and appeals.[64]

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[63] Interviews, 18-10-2011; 04-11-2011.

[64] Yingzeng Wu, *Handbook of People's Congress Deputies (Renmindaibiaodahui daibiao shouce)*, (Shenyang: Liaoning People's Press, 1986). pp. 72-84. See also, Secretariat Group of the first plenary session of the seventh NPC Private Member's Bill Sector, "Precautions for Deputies and Deputy Groups on Introducing Private Member's Bills and Motions (Guanyu Daibiaotuan He Daibiao Tichu Yian Ji Jianyi Piping He Yijian De Zhuyi Shixiang)", (18-03-1988).

2. Weak deputy - constituency ties

A weak deputy-constituency tie was another widely noticed institutional characteristic linked to the representative function. As chapter five shows, the consciousness of descriptive representation was the primary hindrance to the strengthening of the representative function in the 1950s. Things were partially changed in the 1980s. As previously mentioned, the power holders' attempt to increase professional representativeness resulted in an increase in deputies' educational background, and the number of illiterate deputies became significantly reduced. Simultaneously, the pragmatic purpose for economic development further reduced the importance of the class struggle. Consequently, available data so far illustrates a new type of descriptive representation, namely, deputies no longer thought they were representing the proletariat. Instead, deputies thought (1) they belonged to different professions, and (2) they were selected because of their excellence and expertise in their professions. Furthermore, they believed that the authority selected them to report the issues or situations of their profession or work units. According to seven deputy interviewees' responses to the question asking them to identify which people they attempted to represent in the 1980s, their answers, except two senior government officer deputies, were surprisingly identical. Firstly, they thought they were representing the Chinese people. Secondly, they thought they had to be the spokes-person of their own professions and that through them the central policy makers would make decisions more comprehensively (this understanding is also confirmed by the author's survey on the *RMRB* reports, see table 13 in the bottom of the chapter). They believed that once they have reported to the central decision maker about the situation of their profession, it would be no longer a shame that their deputyships were given by selection but not election. Based on these findings, this research highlights two outcomes of such new understanding of descriptive representation. Both of which were arguably responsible for the weak deputy-constituency tie in the 1980s NPC.

Firstly, deputies believed that only through their daily work could they detect valuable information because they thought they should report to the decision makers the information regarding their profession. The direct expression of such belief was the interviewees' castigation of the full time deputyship. As one of the interviewee said, "*how a deputy not indulging in his daily work can find out any information?*"[65] Bearing in mind of this belief, deputies spent the majority of their time on their own works

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[65] Interview, 21-10-2011.

rather than engaging in constituency services. Because their contact with local people was confined almost to their work units, when they heard a local complaint, they would convey it to the NPC as if it was the claim of the people in their profession, rather than that of their constituency. Therefore, the deputy-constituency linkage became deputy-work units (or profession) linkage. Two salient examples were found during interviews. A deputy working in a textile factory introduced a PMB asking for salary increase for textile workers of whole textile industry rather than all workers in the province when she heard some complaints asking for salary increase from her colleagues. Another deputy who was a university lecturer introduced a PMB asking for salary increase for staff of tertiary education institutes rather than teachers in his province. In fact, besides the two senior government officer deputies, all the other deputy interviewees clearly showed that when they served in the NPC, their primary focus was the matters of their own profession rather than constituency matters.

Secondly, seeing the profession as their constituency resulted in the deputies' lack of demand for new institutional designs to strengthen the deputy-constituency ties. Furthermore, deputies were passive in responding to, or applying, the innovative institutional designs that had been developed by the staff members with the aim of strengthening these ties. Therefore, several of such new designs were *de facto* overlooked. One such example was deputies' reluctance to act on the 1978 NPCSC General Office's decree 'Commentaries on Strengthening the NPCSC-deputy linkage.'[66] Part five of this decree gave four comments on strengthening deputy-constituency (Xuanju Danwei) and deputy-masses ties, such as to encourage individual inspection and to organise deputy-run forums for the voters to contact their deputy. However, all the seven interviewees said they never carried out such activities when they were serving in the NPC.

Two of the interviewees who simultaneously had dual post of senior governmental officer (vice provincial governor) and NPC deputy did not show their preference of a profession based representation. Instead, they thought they were representing the people in the provinces.[67] Their responses seemed to suggest that senior officer deputies might have had stronger sense of constituency and the deputy-constituency tie. However,

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[66] The NPCSC General Office, "Commentaries on Strengthening the NPCSC Deputy-Voter Linkage (Assented by the NPCSC Chairman Meeting)", (06-1987). Cites in *Documentary Compilation*, p. 469.
[67] Interviews, 26-10-2011; 07-11-2011. A survey on the RMRB also confirms this finding; see the survey result in table 13.

further discussion showed that they speak for the local people not because they were NPC deputies but because they were senior governmental officers. As provincial governors, they had to obtain more resources from central decision makers (e.g. it may be a decision by the central government of giving his province a special fund to build more highways). Their deputyship facilitated such demand because the resources could be demanded by introducing PMBs in the name of increasing the welfare of the people of his constituency (as said previously, each NPC deputy's constituency overlaps with the provincial level administrative zone he or she belongs to).

3. Deputies' demand for a 'genuine' representativeness

Although the majority of deputies were satisfied with the NPC's institutional designs related to the representative function, evidence can also be found showing the existence of deputies dissatisfied with the weak representation related NPC functions and institutional designs. The intellectual perspective provides a perfect explanation. As the believers in orthodox Marxism, these deputies required innovative institutional designs by which they can *de facto* speak for the people rather than being a decoration to exemplify the NPC's nature of 'advanced democracy than the bourgeois'. It can almost be confirmed that the origin of such requirement was the above discussed bifurcation between substantive democracy and form of democracy. Seen in this light, it is clear that those deputies dissatisfied with the representative function were the most firm believers in orthodox Marxism who believed that a series of NPC institutional 'identities' should be practised to illustrate that the 'substantive of democracy' has been *de facto* fulfilled in the Communist China. An example of the 'identity' was the institutional design giving deputies enough time and power to freely express their opinion. For these deputies, without this identity, the NPC would be similar to their understanding of the Western legislatures. Also in this light, deputies dissatisfied with the related institutional setting that highlighted only the 'form of democracy' (according to classic Marxist doctrines, those designs should be bourgeois' legislative tricks and not appear in a Communist legislature). One such example came from an ethnic minority deputy who expressed her resentment that in order to show the advantage of allocating seats for positive discrimination (which belonged to a 'form' of democracy), ethnic minority deputies were required to wear ethnic characterised clothing.[68] She was

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[68] Ethnic minorities in China normally have their own clothing, by which their ethnic belonging can

angry about that because what she needed was to represent the ethnic minority by letting central decision makers hear local voices rather than showing symbols.

> *We were told to prepare characterised wears as we were elected as deputy; however, the custom of wearing them has been long gone even in our hometown. Isn't it merely for decoration? Wearing those bizarre clothes, we are displayed in the congress hall like pandas in a zoo... It must be stopped for this is just a symbol. In fact, these clothes have been almost theatrical costumes!*[69]

Similarly, primary evidence seems to suggest that some deputies in the 1980s complained about another institutional defect that the deputies' private proposals (the Private Bill-Private Proposal dichotomy is discussed in the following section) always received a passive and perfunctory feedback, which were believed to be another violation to the 'substantive' of democracy.[70] Specifically, the executive had full authority to deal with PMBs and private member's proposals at its will because, in practice, the majority of bills and proposals were given to the executive to handle; meanwhile, the executive had no need to have deputies to approve the feedback. Consequently, PMBs had a considerably limited power in compelling the executive to do certain things. Correspondingly, the executive normally handle it simply and hasty; deliberate procrastination, and even rejecting giving responses at times.

It is important to bear in mind that the existence of a few deputies dissatisfied with 'decorated (*form of*) democracy' and requiring an authentic (*substantive*) representativeness did not mean they were remonstrative deputies or focused on strengthening the deputy-constituency tie. The author re-examined the interviews in O'Brien's pioneering study of the deputies' role in the early 1990s.[71] The reexamination illustrates that in all cases, deputies behaved as a bottom-up information broker aiming to provide decision makers with their own advice, which meant those deputies cannot be seen as remonstrators. Moreover, it is assumed that avoid challenging orthodox Marxist intellectual ideas was the reason for those deputies not to be remonstrative. Primary evidence suggests that even for those deputies who were longing for a

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be easily identified. Ethnic minority deputies were told to wear those cloths in order to manifest their representativeness.
[69] Yang, *Great Elections in China*.p. 87.
[70] Ibid. p. 38.
[71] See O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies".

substantive democracy to *de facto* speak for the people, they did not attempt to fulfil their objectives by making new institutional designs. Instead, they deliberately showed obedience when encountering any political taboos.[72] Furthermore, once their demand for substantively representing the people went beyond the limitation of corresponding institutional settings, they would withdraw such demands and make no further effort for institutional development. A salient example is Liu's book recollecting his many attempts at establishing a school for juvenile delinquents.[73] According to the book, as a NPC deputy, he introduced a PMB for several times calling for funds but was hastily rejected by the Central Government's Department of Education by giving a number of reasons such as lack of funds as one of the major obstacle. His attempt was finally responded to by the executive after relinquished the NPC deputyship and was appointed vice chairman of the Provincial People's Consultative Conference.[74] In the interview with Liu, he talked about this case and expressed his dissatisfaction at the PMBs' lack of a manipulative force. He said in the interview that since everyone tried to 'stay out of trouble', his bills requiring funds were kicked as a ball ("Tipiqiu", literally means to shirk their responsibilities to each other) between different government departments. However, on the other hand, he fully understood that the NPC was a stratified organisation, in which 'ordinary' deputies[75] could only give their comments to the upper power holders but could never demand for any institutional changes to increase the mandatory power of the PMBs.

4. Staff members' intellectual ideas and the outcomes

There were many notable clues showing that NPC staff members understood quite well the defects of the existing institutional settings that deputies could not *de facto* represent the people. However, their new institutional designs in the 1980s aimed largely to increase the NPC's 'form of democracy' rather than making any innovative designs to give more 'substantive democracy', which clearly could not make those discontented

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[72] Ibid.

[73] Youping Yang, *Endless Love: Liu Yunlai and Qiming School (Daaiwujiang: Liu yunlai yu jiangxi qiming xuexiao),* (Nanchang: Jiangxi Science and Technology Press, 2011). pp. 20-25.

[74] The Provincial People's Consultative Conference is the provincial level institution of the abovementioned CPPCC that had been downgraded into a consultative organisation after the establishment of the NPC in 1954.

[75] It is worth highlighting the previously mentioned point that, without any established institutional settings, deputies deliberately distinguished 'normal deputy' and 'higher deputy' because of the vanguard consciousness.

deputies satisfied. More importantly, compared with most deputies who were passive in the NPC institutional changes, staff members' active work on institutional design resulted in a sharp increase of many new representative related institutional designs. However, their consciousness of seeing representation as a top-down process resulted in the fact that these designs contributed little, if not none, to an increase to democracy.

To be specific, the influence of the staff members' intellectual ideas on the NPC institutional designs had at least two expressions. Firstly, staff members equated the increase in the deputies' educational background and the widened coverage of representativeness (largely in professions but also including other measurements such as gender and ethnic minorities) with the increase in the representative function. Therefore, they thought it was appropriate to allocating seats for the purpose of positive discrimination. Correspondingly, they had no intention to make changes to the convention of allocating seats. None of the promulgated regulation or law, even the Electoral Law in 1979 and its several amendments in the 1980s, had any article to ban it.[76] Clearly, no matter how exquisite were new institutional designs that artificially controlled the deputy composition, the NPC's representative function was still weak since deputy accountability could not be improved without free elections. Chen's article shows quite a salient example. He urged the changes in the electoral related institutions, which included the increase of non-CPC candidates, reallocation of seats (he warned of the abnormally high proportion of government officer deputies), and the increase to deputies' educational background (by the promulgation of an envisaged 'deputy law' that sets deputies minimum educational requirement).[77] These institutional designs were ambitious. However, none of those designs attempted to reduce or prevent deliberately allocating seats, and therefore it made no contribution to the strengthening of the NPC representative function.

The second expression was the staff members' indifference, and aversion, toward introducing any new institutional designs to increase the power of the PMB. Its expression was the change of PMB regulation in 1983, in which PMBs were dichotomised: a PMB with a joint endorsement of more than thirty deputies could be

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[76] Specifically, first, although the Electoral Law stresseed that nomination can be made by the CPC and other organisations, the CPC *de facto* dominated that process. Second, although the law stated that anyone having thirty voters' endorsement could be nominated, there was an electoral committee controlled by the Party that had a decisive power to control the refined candidate list.
[77] Yuqin Zhang and Kelin Chen, "On Upholding and Perfecting the People's Congress System," in *Essays on the Local People's Congress Works (Difang renda gongzuo yanjiu lunwenji)*, ed. Jiangxi Provincial PC General Office, (Nanchang: Jiangxi People's press, 1990).

introduced as a bill (yi an). Having a greater manipulative power, this type of PMB was normally dealt with in a serious manner. On the other hand, the PMBs introduced by individual deputies were named "comments, critiques, and suggestions (Private Member's Proposals)". These bills were normally sent to related government departments. Whatever the outcomes were, deputies would only receive a feedback report. They could appeal against the feedback. However, as far as this research is concerned, no one ever did appeal because it could have been ineffective, time-consuming, as well as 'against convention'.[78] The number of PMBs steadily decreased with the new regulation, leaving the majority of private bills in the form of proposals that were much lower in the manipulative power (see figure 14). The institutional transformation therefore, further turned individual deputies into information brokers rather than remonstrators.

Figure 14: *Number of Deputies' PMBs before and after the 1983 private bills regulation*
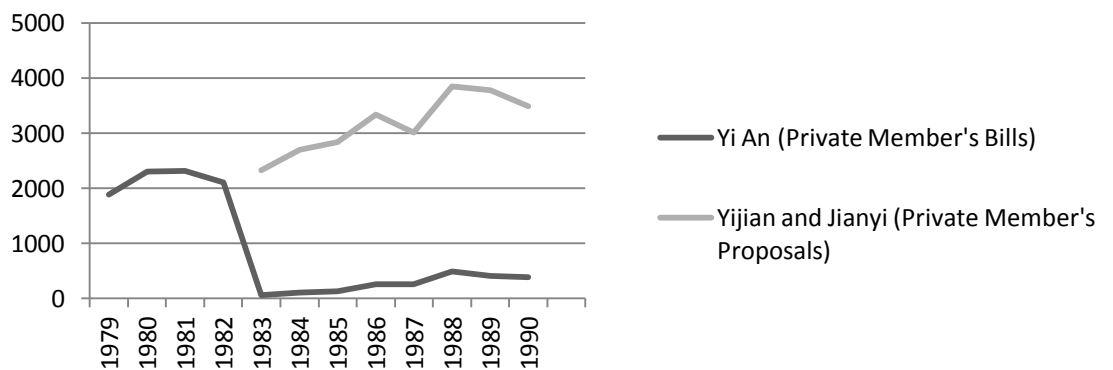
Note: Before the 1983 Private Bills Regulation, PMB was called 'Ti An'.

Source: NPCSC General Office Research Section, *Documentary Compilation*, p. 856-57.

IV. Supervision

Most scholars of Chinese legislature, as discussed previously in the review chapter, focused on the NPC's lack of adequate structural support and its negative effect on the strengthening of the supervisory function. However, it is challenged by empirical evidence, particularly by the deputies' unwillingness to engage in supervision despite

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[78] What they normally did was to introduce another bill in the following year with the same topic however made some alternations according to the governments' feedback; to be sure, such deed was a clear sign of a top-down representation.

institutional support having been given.[79] Such unwillingness had two expressions: deputies' deliberate avoidance of having different opinion with the authority, as well as their reluctance to oversee the executive that would have reduced the executive efficiency. Highlighting the impact of intellectual background, the intellectual perspective provides an explanation to the above two expressions.

1. Aligning with the authority

In the 1980s, the most commonly noticed development in the supervision related activities within the NPC deputies was their significantly greater wish to engage in the supervision of government. However, the passivity in challenging any decision or activity made by the party remained. This contrast was normally interpreted by the legislative scholars as a NPC's strategy to exchange for more allowance of institutional development (see the 'cooperative' structural models in the review chapter). However, evidence in this research seems to illustrate that the above interpretation could be a half-truth in the NPC. It is undeniable that deputies in the 1980s were more active in government oversight. However, it was by no means evidence of deputies' demand for more institutional developments. To the contrary, this research stresses that deputies' commonly witnessed consciousness was that all political institutions (the NPC, the Government, etc.) should work collaboratively under the leadership of the vanguard CPC. All of the interviews, and other sources of data, detected no evidence showing that deputies in the 1980s wished to increase the NPC's supervision power by introducing new institutions. Instead, the interviewees' accepted organisational relationship between the NPC and other political institutions was the 'practical' model and not the 'should-be' model as illustrated in chapter one (See also the survey result in table 13, particularly the second table).

Orthodox Marxism had strong linkage to the deputies' acceptance of the 'practical' relationship that was largely against the Constitution. The party's control over other institutions, according to deputies' default understanding, was legitimised by the Marxist doctrine proclaiming the communist party's role of the vanguard of the

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[79] Deputy's right of inquiring into governmental departments was one example. This right has been endowed by the Constitution; however according to a report in *BR* appreciating the increase of the number of deputies committing inquiries, such an increase was not the result of any institutional development. Tian Sansong, "Democracy in Action, Accent on Reforms: Sidelights on NPC Session", *BR*, Vol. 23 No.39 (22-09-1980).

proletariat who were the 'master' of the state. This resulted in a principle that the party should be the leader of all political institutions. The 1980s witnessed the CPC's unprecedented 'eloquent' rhetoric stressing the separation between the party and the government.[80] However, the party never mentioned releasing its control over the legislature. To the contrary, the Party's indisputable right to lead the NPC was normally seen as a fundamental principle in most of the NPC related publications, particularly in the deputy's training pamphlets and the power holders' speeches (see chapter seven). It should be stressed that because of their intellectual beliefs, deputies' acceptance of such principle was largely, if not entirely, spontaneous.

This is a key principle for understanding the NPC deputy and staff members' attitude toward the NPC's supervisory function. In simple terms, such an attitude encouraged them to follow and practice the CPC's preferred way of supervision: as discussed in chapter seven, it highlighted the NPC's supervisory function as a mechanism to help improve the quality of government processes and outcomes (e.g. to ensure government decisions not in contradictory laws). Consequently, two characteristics can be drawn to explain the deputies' role in improving the NPC's supervisory function.

First, deputies' supervisory activities did not contribute to the increase of the executive accountability as deputies knew well and tried to follow the party's abovementioned preference. Extremely rare were the cases of deputies requiring the executive to be held accountable to any failure of decision making or malfeasance. Even for the newly developed institutional designs aiming at increasing executive accountability, they were quite rarely used by the deputies. For example, in the 'questioning section', the most commonly seen deputy questions were merely to ask for information about certain governmental plans.[81]

Secondly, it is undeniable that there were few cases showing the emergence of deputies' demand for holding accountable the government's misdeeds that caused great social and economic loss. However, it was by no means a sign of deputies' rising initiative and willingness to engage in supervision but a sign of deputies' dependence. Salient examples can be found in the two most popular cases that have been frequently quoted by the pioneering researchers as the examples of the increasing NPC power of

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[80] Detailed discussion can be seen from the reviewing of the so called 'letting go – tightening up circule'.
[81] Sansong Tian, "Democracy in Action, Accent on Reforms: Sidelights on NPC Session", *BR*, Vol. 23 No.39 (22-09-1980).

supervision. The sinking of an oil drilling platform in Bohai Sea that killed 72 people in 1979, and the serious train crash in 1988 that killed 27 passengers. Both cases witnessed the NPC's engagement in supervision. However, it is extremely crucial to examine those single cases in a larger perspective. The oil drilling case happened when the ruling party was in an all-out movement fighting against bureaucratism, the NPC's active intervention was merely 'a pawn in a chess game', in which the players were not the deputies but the ruling party. The same situation can also be observed in the 1988 train crash. This period saw a stagnation of economic reform and the ruling party had an attempt to launch limited political reforms, which included making the executive more accountable. In this case, what the NPC did was merely to respond to such attempts.[82] The interviewees to the NPC deputies in the 1980s also echoed the above two cases. When they were asked about their attitude when they were reading and discussing government working reports, their responses were quite similar: although this procedure was literally called 'examining and discussing government work report (Shenyizhengfugongzuobaogao)', they all believed that they were not examining the report but as expressed by two interviewees, trying to *"learn the CPC Central Committee's programmes and plans which should be practised in their routine works after the meeting."*[83]

Such passivity of NPC deputies not only reduced their demand for the NPC's strong supervisory function, but also made it less likely for the deputies to push forward institutional developments that could give the NPC more power to examine government processes and outcomes. The interviews showed that the deputies' most radical form of expressing dissatisfaction at the lack of supervision power was merely personal grumbling and satires. One interviewee recalled a satire circulated between the deputies: *"our group conference examining government works was a place where we sit together, you speak to me, I speak to you, and that's all."*[84]

The consciousness of aligning with the party can be also observed from staff members. Author's survey suggests that such an obedience was also largely, if not entirely, deliberate. The salient example of the spontaneity was Liu and Cheng's article discussing new institutional designs on supervision.

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[82] Moreover, the train clash happened during the NPC Plenary Session period, and many Japanese high school visiting students were killed in the accident; these two occasional factors further intensified the involvement of the NPC.
[83] Interview: 26-10-2011; 02-11-2011.
[84] Interview: 31-10-2011.

Under Socialism, all of the people have similar interests; therefore defaming and abasing between Parties is absolutely not possible to be seen in our country, in the same vein are the interest conflicts between different capitals. Since that we do not need to adopt capitalist countries' checks and balances system.[85]

The above quotation illustrates staff members' lack of consciousness that political power should be checked and balanced. Correspondingly, an institutional characteristic was observed that the majority of the staff members focused on preventing any new governmental legislation, decisions, or activities from being inconsistency with promulgated laws, particularly the Constitution.[86] Although it should be considered to be a great progress compared with the lawless period before 1978, it was not a sign of strong supervisory function. The reason for which was that examining only the executive's activities in contradictory laws left a remarkably large grey area, in which the Governments' inappropriate processes and outcomes were not contained unless they were inconsistent with laws. Therefore, it *de facto* crippled the NPC's very strong power (The 'highest' organ of state power among other institutions) in examining the executive: as said in chapter seven, the majority of government processes or outcomes that should be examined and approved by the NPC, such as the annual budgets or annual government work report, would have not contradicted any laws even including serious defects.

A survey of primary sources, particularly the writings of staff members regarding new institutional designs, illustrates that their dissatisfaction at the NPC without adequate institutional supports in examining the executive may have been stronger during the period of 1987-1988, at that time political reform reached an apogee. This period saw their attempts to improving the supervisory function by new institutional designs under the pretext of examining governmental activities in contradictory laws.[87] Such attempts shared a common theme of making changes to the NPC's passive role in the supervisory

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[85] Zheng Liu, "Characteristics of the People's Congress System and the Experiences of Its Development (Woguo Renda Zhidu De Tedian Jiqi Lishifazhan He Zhuyao Jingyan)," in *Speeches on the People's Congress System (Renmindaibiaodahui zhidu jianghua)*, ed. zheng Liu and Xiangqing Cheng, (Beijing: Democracy and legal Press, 1992). p. 33-37.
[86] Although not that remarkable, this characteristic can also be observed from the NPC deputies. See, for example, Houjian Li, *The Supervisory Works of a NPC Deputy in Solving Disputing Cases (Renmindaibiao canyu jiandu tupo xuanan yian),* (Beijing: Procuratorate Press, 2003). Esp. Chapter 3.
[87] "The Twenty-Fourth NPCSC of the Sixth NPC is held (Diliujie quanguorenda changweihui juxing di ershisi ci huiyi)" *Xinhua Monthly*, Vol.519, issue 1, 30-02-1988.

work by giving it more authority. Liu and Cheng's article suggested the establishment of three new committees to strengthen the NPC's supervision of the Constitution: 1) Constitutional Committee, in charge of nullifying new laws and regulations that conflicted with the Constitution; 2) Internal and Judicial affairs committee, in charge of examining PMBs and the NPC internal affairs;[88] 3) Personnel Affairs Committee, in charge of double checking governmental personnel decisions.[89] In another article, Du went further in pointing out that 'the NPC having no adequate institutional support to oversee the executive' was against the Constitution. His suggested institutional design stressed the increase of the NPC's structural strength by establishing a regulation punishing those who hamper supervisory activities.[90] Clearly, the institutionalisation of these proposals would remarkably strengthen the NPC's supervisory function by giving it a strong institutional support. In doing so, the NPC would have gone beyond the CPC's expected 'assisting by supervision' role.

History shows that only Liu and Cheng's second advocacy quoted above, the only one in three that would not directly 'hamper' the executive power, was institutionalised. Du's advocated regulation received no response as well. The fact that the above quoted attempts ended up with nothing definite further illustrated that any new supervisory function related institutional designs would not be institutionalised if it gave the NPC too much institutional support, by which it can *de facto* be the highest organ of state power and can supervise the executive more freely.

In a widely cited research, O'Brien appreciated the staff members' attempts at introducing new institutional designs on deputy inspection.[91] Evidence also shows that there were staff members in the NPCSC and other institutions of the NPC who were very active in pushing forward the supervisory related institutional developments. Their advocates contributed to the establishment of several related regulations in 1988.[92]

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[88] The 'internal affairs' is quite difficult to define. In fact, according to the list of functions, this committee's primary focus is legal affairs. See http://www.npc.gov.cn/npc/bmzz/neiwu/node_1670.htm.

[89] Zheng Liu and Xiangqing Cheng, "On the Supervision Power of the Npc and Its Standing Committee (Lun Renda Jiqi Changweihui De Jiandu Quan)," in *On the Supervision Power of the Npc and Its Standing Committee*, ed. Reseach Section of the NPCSC General Office, (Beijing: Law Press, 1988). pp. 6-19.

[90] Xichuan Du, "Issues Regarding the Making of the Supervision Law of the Npc and Its Standing Committee (Zhiding Renda Jiqi Changweihui Jiandufa De Youguan Wenti)," in *On the Supervision Power of the NPC and its Standing Committee (Lun Renda Jiqi Changweihui De Jiandu Quan)*, ed. Reseach Section of the NPCSC General Office, (Beijing: Law Press, 1988).

[91] O'Brien, *Reform without Liberalization*. p. 166.

[92] Yan Lin, "From Spontaneity to a Custome to a Legal Power: The Establishment of the NPCSC Legal Examining Power (Cong ziwo chuangshe dao zhezhi guanli dao fading quanli: quanguorenda

However, because of their 'aligning with the authority' nature, progresses they made were not remarkable. In article two of the *NPCSC general office on NPC deputy inspection* (one of the regulations established in 1988) that assigned the scope of inspection, it stressed that inspection should focus on whether laws and NPC regulations, particularly the Constitution, were complied with. This shows that the regulation did not add any new designs to the abovementioned principle that supervisory activities only focused on processes and outcomes in contradictory laws. The same article of this regulation also stressed that whether 'two basic points of the road of building a socialist state' were followed should be another area of inspection. Considering the fact that "two basic points" were the CPC's ideological and practical foundations, it is not very difficult to see how stale the regulations were.

2. Sense of not enough qualified and 'efficiency first'

During the interviews it was illustrated that the deputies' sense of not qualified to engage in the supervisory activities was also responsible for the deputies' lack of wish to supervise. As discussed previously in this chapter, the deputy selection criterion resulted in deputies' hesitation to make decisions. The similar situation could also be witnessed in their supervisory function. The flow of logic is shown below:

- The belief that they were selected to represent certain professions or groups

- In the NPC they should focus only on the affairs linked to their profession

- Due to the reason that the executive's decisions and activities were national wide or for long-term, their narrow sight cannot judge whether they were correct

changweihui zhifa jianchaquan de queli guocheng) " *Tsinghua Law Review (Qinghua Faxue),* 3, no. 3 (2009): 5-25

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- Because of deputies' basic belief that the executive under the leadership of the vanguard CPC would not make any decision or activity that may jeopardise the interests of the people. Therefore when deputies saw something seems to be questionable, they thought it was because of their limited scope that hampered their understanding of decisions.

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- Deputies kept silent even when they saw something seems to be questionable

In the fieldwork the interviewees were asked about their opinion on Annual Government Work Report being too short that had been widely identified by Western scholars to be a sign of the NPC's weak supervisory function. They were also asked about whether they had ever thought of receiving the report earlier so that they could have more time to read and scrutinise. Their responses showed their lack of concern with it. Four interviewees could not answer this question because they did not notice this issue. Another interviewee felt that the time was sufficient. A typical answer came from one interviewee who, as mentioned above, was a retired director of Provincial People's Congress's Law Committee. He said that 'normal' deputies lacked enough knowledge regarding the report, they still could not fully understand the contents or make investigation into certain questions in the report even if they were to be given more time.

The deputies' strong nationalist motivation of seeking national greatness and its resulting 'efficiency first' consciousness can also be witnessed. The interviews reveal a shared understanding that deputies, largely unconsciously, linked too much supervision to a kind of nitpicking and deliberately avoided to do so, as they thought it may reduce governmental efficiency.

3. Xinfang petition supervision

The NPC lacking the supervisory power has arguably resulted in an arrogant government that thought poorly of deputies' supervisory activities. A local

government's report in responding to the recommendations from three NPC deputies perfectly illustrates the arrogance: all of its four points of responses did not directly answer any deputies' recommendations but stressed either the issues have been addressed or many works have been done to address the issues.[93] However, although most of deputies were feeling dissatisfaction at the arrogance of government, they only expressed such feeling orally and personally. In contrast, a distinctive type of supervisory activity, which can be named as Xinfang petition (literally 'letters and visits petition')[94] supervision, should be highlighted. Xinfang petition is normally to ask a higher executive or judicial organ to individually reconsider a decision made by the lower authority.[95] Because Xinfang petition does not provide a mechanism of external supervision, people's grievance would sometimes not be solved by it (because of the administrative linkages and relations, higher authority sometimes had no wish to respond to the grievance made by the lower authority). Therefore in rare cases grassroots petitioners sought salvation from contacting individual deputies and used it as an informal way of petitioning. One of the interviewees gave an example of such contacts that when he was in Beijing for a plenary session; one day, an old couple came to visit him and other deputies, saying that their son, a college lecturer, was murdered by his student; however, as the murderer was from a family of high governmental officer, he was saved from a death penalty by a fake medical report testifying to his mental disorder. The old couple tried every way to appeal for redressing but got no result; they finally presented a petition in the NPC.[96]

According to this interviewee, although the cases of making Xinfang petition through individually contacting NPC deputies were rare, the total number of such contact was not small in the 1980s NPC. This type of supervision was the only observable one that went beyond the ruling CPC's expectation in so far as the data this research obtained. Moreover, regarding this type of supervision, the survey witnessed deputies' very strong willingness to get involved. This attitude was never seen in any other aspect of

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[93] Jiangxi Provincial Government Education Committee, "Reply on Mr. Cao and Other Two NPC Deputies' Questions Brought Forward in Their Report Regarding Jiujiang City Vocational Education", Non-public governmental file (25-02-1988). My great appreciate goes to the interviewee (in the interview in 27-10-2011) for giving me this letter.

[94] Xinfang Petition is an administrative system for direct hearing complaints and grievances from individuals.

[95] E.g. a citizen may address a petition to a provincial government's Xinfang bureau, asking for reconsideration on a decision made by city government that he thought an injustice.

[96] Interview, 31-10-2011.

supervisory activities (e.g. examination of government work report or conducting inspection).[97]

The intellectual background of this type of supervision cannot be simply linked to orthodox Marxism. Instead, this research argues that the abovementioned deputies' strong sense of being responsible to represent the people was a crucial motivation. Both the interviews and the primary evidence regarding this type of supervision show that deputies saw whether the people's grievance can be appealed to be the bottom line of the legitimacy of their deputyship. As discussed previously, the literal meaning of 'deputy' in Chinese is 'representatives'; moreover, China's political philosophy and history discouraged the development of the civil society. This resulted in a rigid division between the insiders and outsiders of politics. Therefore in China the term 'deputy' further means 'a person who represents the people outside the political system to contact the power holders'. Traditionally, Chinese people saw politics as a special territory staying outside of the society and any forms of contact were normally avoided unless having serious grievance that may threaten or destroy their basic rights (e.g. property, health, or life).[98] This fact explains the reason as to why a deputy lost his or her legitimacy if he could not help the masses to appeal for their grievances.

This explanation perfectly coincides with the fact that the demand for petition supervision was only witnessed in deputies but not in staff members. For staff members, it not only exceeded the party's demand, but they also had no need to do it in order to secure their legitimacy. In fact, pamphlets designed by staff members for the training of deputies clearly warned them to avoid personal contacts with individuals seeking salvation from the legislature. Lacking support from other institutional designers, particularly the staff members who specifically design the institution, deputies' petition style supervision was never institutionalised: no established institutional settings or regulations about petition supervision could be found. It remained as part of a deputy's individual activities, partially underground, however crucial.

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[97] According to Liu, the grievance of the old couple shocked the deputies; he and other deputies kept focusing on this case until a much fair solution was made.

[98] Li and O'Brien's research on rural protest movement to some extent confirmed the existence of such consciousness even in contemporary China. Lianjiang Li and Kevin J. O'Brien, "Protest Leadership in Rural China " *The China Quarterly,* 193 (2008): 1-23

Conclusion

Based on the basic claim that the NPC deputies and staff members had the orthodox Marxist intellectual backgrounds, this chapter explained some widely noticed functional and institutional characteristics of the 1980s NPC from the intellectual perspective. It also questioned some claims of pioneering research and highlighted points that were largely ignored previously. This chapter focused only on three NPC functions, the legitimising function was not discussed because no observable data shows that it was a noticeable function demanded by the influencers in this group, because they saw the NPC's function of legitimising the CPC, instead of policies or the regime, as a matter of course.

Table 13: *A Survey of NPC deputies' deputyship-related self identity and activity*

Note: Survey is based on *RMRB* reports on the NPC deputies. The selected two periods witnessed the first plenary session of the sixth and seventh NPC (the exact period is the session period plus one week before the session).

Period	Sample Size	Deputies' PMBs or speeches focused on, or based on the understanding of his/her						Social background of those deputies who focused on constituency affairs			
		Expertise or occupation		People of whole country		Constituency		From ethnic minority regions		High-rank governors of the constituency	
1983 5.31-6.21	161	74	46%	54	34%	33	20%	11	33%	14	43%
1988 3.18-4.13	162	37	27%	65	47%	36	26%	8	22%	16	44%

Period	Sample Size	During the Plenary Session period, deputies' activities can be identified as					
		Providing advices or suggestions on specific matters regarding the deputies' occupation or constituency, or even a nation-wide issue		To examine government work reports or and other works		Appreciating the 'greatness' of government works or the party works	
1983 5.31-6.21	161	88	61%	6	4%	26	18%
1988 3.18-4.13	162	116	76%	24	16%	11	7%

Source: RMRB. Survey and table by author

Chapter 9. Intellectual Elite

Introduction

The following two chapters will focus on two groups of NPC reform influencers that have been largely ignored by pioneering research. Of particular importance to the Chinese political system is a clear gap dividing 'insiders' and 'outsiders' of political power. Members of the intellectual elite are normally identified as lacking power to influence politics; thus, regarded as 'outsiders'. For the reason of that, this group of people were normally not the concern of the related pioneering research. However, as shown in chapter six, three strategies were used to strengthen their influence. This made them a force to be reckoned with in the study of the NPC reform.

Based on the intellectual perspective, the role of the intellectual elite in the 1980s NPC reform was revealed in two stages. Firstly by displaying intellectual backgrounds and secondly by linking it to specific functional demands and institutional designs.

The people in this group were bifurcated based on their social background. One had partial linkages with, or partially had, political power while the other did not. For the people of the latter type, some of which took radical strategies to influence politics while others did not. Such diversified social backgrounds were also linked to this group of people's diversified intellectual background. Specifically, primary sources suggest the existence of three major types of intellectual elites in the 1980s, namely, (1) the orthodox Marxist intellectual elite (B-C in the spectrum), (2) the nationalism influenced liberal democratic intellectual elite (B_1-C_1), and (3) the radical liberal democratic intellectual elite (C_1-A_1). The following three parts focus on each type respectively.

I. Orthodox Marxist intellectual elite

1. General outline

Generally speaking, people could be categorised as the orthodox Marxist intellectual elite (OMIE) if their mindset regarding the NPC institutional development in the 1980s was on the basis of orthodox Marxism. [1] Primary evidence shows that the OMIE

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[1] There are certain signs showing their intellectual belongings, such as seeing the Western

normally applied the 'legitimising power' strategy to advocate their demands and advocacies. In Coser's context, the use of such strategy entails a prerequisite that outside influencers' theoretical system should not conflict with that of the power holders. As orthodox Marxism was the CPC's ideological foundation, the ruling CPC would officially accept the OMIE's advocacies only when the intellectual ideas of the latter was also based on orthodox Marxism.[2]

Their advantaged status in academic circles was one of the benefits of the 'legitimising power' strategy. In particular, it is worth mentioning that their key posts in certain semi-official academic organisations gave them a 'think-tank' role for the power holders.[3] Such a role resulted in many opportunities for them to be recruited by the NPC's various organisations to provide consultancy for various purposes, such as in the making of laws or new institutions. Taking three perhaps the most influential OMIE as an example; Zhang was vice director of the Chinese Academy of Social Science (CASS), director of the China Law Society, and the China Political Society. All these positions were no doubt influential think-tank organisations. He (name of a person) was China's leading scholar in law and Constitution as well as professor in Wuhan University. Pi was a professor in another China's top university and took the post of director in several law related associations.

It is worth stressing the educational background of the people in this group. Zhang, He, Pi, and many other people in this category, shared a similar educational background with that of the staff members in the NPC's research section (e.g. Liu and Cheng that are mentioned in chapter eight). They received their tertiary education before the CR. The only differences however, were their subjects of specialisation. Most of the OMIE majored in legal politics, which provided them adequate knowledge in legal political theories. In addition, the class-based legal concept and its resulting 'rule by law' concept could be saliently observed in the people in this group,[4] arguably because their

representative democracy as a trick, or seeing democracy as class-based.
[2] For example, see Yuzhi Gong, "Dengxiaoping and Party's intellectual policies", *BR* (19-03-1984): 16-20.
[3] Detailed studies of China's 'think-tank' academic organisations can be found at Margaret Sleeboom-Faulkner, "Regulating Intellectual Life in China: The Case of the Chinese Academy of Social Sciences " *The China Quarterly,* 189 (2007): 83-99.
[4] Its direct expression was the belief that the CPC as the vanguard of the proletariat should be the leader of all legal affairs, for laws in Marxist context should reflect the wishes of the ruling class. Example of its expression is Zhang's defence of the changes in the new constitution in 1982 in which 'SiDa (for details see chapter five)' was abolished. see, e.g., Youyu Zhang, "The Abolition Of "Sida" In the New Constitution Favours the Development of Socialist Democracy " in *Issues on Political and Economical Reform (Guanyu Zhengzhijingji Gaige de Ruogan Wenti)*, ed. Youyu

legal political education at that time was based on Marxist tenets and Soviet legal political system.

In regarding to the OMIE's functional demands, compared with other types of intellectual elite, the OMIE's hybrid nature of being both semi-official think-tank ('in politics' nature) and scholars ('out of politics' nature) shaped their specific demands for certain legislative functions. The specific expression was twofold. First, compared with the grassroots influencers who sometimes used the NPC as a petitioning organisation, the OMIE's advantaged status in the stratified society reduced their demands for a legislature to have certain functions (such as the strong supervision power that would help protecting their basic rights). Second, they could not be equated to power holders because of their profession. Therefore, the OMIE in the 1980s normally followed the power holders' functional demands. However, because of their 'think-tank' role, they actively participated in the designing of the NPC's corresponding institutions based on the power holders' functional demands.

2. Decision-making

As chapter seven illustrates, the power holders' demands for the NPC's decision making function were bifurcated. Firstly, they demanded a strong law-making function to increase both the quality and quantity of legislation. Secondly, they demanded a passive and subordinate assent giving function. The OMIE in the 1980s largely copied these characteristics, with a slight modification in their strength for the demand of the NPC's assent-giving function. This difference arguably came from the OMIE's less pragmatic attitude as well as their legal-political educational background that resulted in their greater concern with the legislatures' role as the highest organ of state power rather than an organisation making laws only for pragmatic purposes.

This diversity was echoed by the OMIE's greater emphasis on new institutional designs that gave the NPCSC more power and independence in the assent-giving function. In his article suggesting reforms on bill voting regulations, Li called for votes on certain critical issues that previously had not needed to be voted in the NPCSC.[5] Zhang also

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Zhang, (Beijing: Qunzhong Press, 1988). See also Youyu Zhang, "An Issue Worth Seriously Studying and Discussing (Yige Bixu Renzhenyanjiu, Tansuo de Wenti) " *Xinhua Digest,* 103, no. 7 (25-07-1987): 16-20.

[5] Zuxing Li, "People's Congress Voting Institutions and the Invisaged Reforms (Renda Biaojuezhi

focused on the NPC's assent giving function. In his report on the scrutinising of the 'draft *NPCSC Regulation of Deliberation (yishi guize Caoan)'*, Zhang suggested two changes. First, the head of the organisations that suggests personnel for recruitment should be summoned to the NPCSC to respond to deputies' inquiries before the approval of the decision. Second, he suggested an article that empowers the NPCSC to organise a Commission of Inquiry into Specific Questions (TedingWenti Diaocha Weiyuanhui) and to make decisions on critical issues based on the report of that commission.[6]

It is crucial to see that the abovementioned institutional designs on strengthening the NPC's assent-giving function were all focused on the Standing Committee, which was by no means a coincidence. This research claims that the OMIE's emphasis on the NPCSC had a strong linkage to the functional conflict between the decision-making function and representative function. As previously noted, orthodox Marxism gave its believers a consciousness of descriptive representation, which made it almost unlikely to reduce the size of the Plenary Session (because of China's huge geographic and demographic size and diversity). However, the demand for a huge number of deputies was immediately in conflict with the power holders' urgent demand for a professional and quick-responding decision-making organisation having a structural prerequisite of small size. To reconcile this conflict, the only solution that the OMIE could provide was to strengthen the NPCSC while leaving unchanged the huge Plenary Session. Zhang's explanation to the new constitution in 1982 was a typical expression that significantly enhanced the NPCSC law-making power:

> *Our country has one billion people, more than two thousand counties, more than fifty ethnic minorities, the number of NPC deputy cannot be small, or the central-local tie would be weak and local voice would not be heard. However, too large size will also be inconvenient for holding conference and discussion; this defect is particularly salient contemporarily when our country needs plenty of new laws.*[7]

Primary sources in this research so far seem to confirm that such a solution was in the 1980s the sole choice for these influencers. Evidence shows that they attempted to

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Jiqi Gaige Shexiang) " *Law Science (Faxue)*, no. 11 (1986): 1-6.
[6] "Zhang Youyu's Report on NPCSC Examination of the Regulations of Deliberation (Draft)", *Xinhua Weekly*, No. 7 (1987).
[7] Youyu Zhang, *Studying the New Constitution (Xuexi Xin Xianfa),* (Tianjin: Tianjin People's Press, 1983). pp. 65-66.

address it by introducing other institutional changes, such as the bicameral system.[8] However, they finally abandoned these attempts because they were viewed to be in conflict with orthodox Marxist doctrines. Moreover, strengthening the Standing Committee also went against Marxist doctrines because it would not only create another layer of power above the 'supreme power' but also lacked a formal empowering process.[9] Interestingly, evidence shows that the majority of the OMIE knew well of this institutional flaw (arguably also because of their legal-political educational background). Similarly, they also noticed the ensuing difficulty of legitimising the NPCSC's power. The OMIE tried to legitimise the NPCSC by stressing two widely cited pieces of evidence, VIZ. the urgent demand for new laws and the so called 'indirect empowering', claiming that the NPCSC was indirectly empowered by the Plenary Session (e.g. the plenary session examines the NPCSC working report annually).[10]

3. Representation

The OMIE's lack of liberal democratic ideas significantly diminished their demand for deputies to be remonstrative. Therefore, they followed and attempted to institutionalise the power holders' demands for the representative function, especially its most distinctive feature of stressing deputies' top-down role as an agent rather than bottom-up role as a remonstrator.

Correspondingly, all of the OMIE's suggested institutional designs were based on the acknowledgement of two uniformities that can also be observed in the power holders. The first one was the uniformity of interests between the party and the state, which was demonstrated by the OMIE's stressing that (1) even in bourgeois legislatures, legislators who were simultaneously a party member could not go against the wish of their party; and (2) the CPC's role of the people's vanguard made it less likely for a party's wish to

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[8] For example, bicameralism was rejected for the reason that a legislature in classic Marxist tenets should be unified; the rejection is also arguably for its potential risk of reducing law-making efficiency. Ibid. pp. 65-66.

[9] The NPCSC deputyship was not given by democratic elections, but by (1) the nomination of Chairman's group; and (2) the consultant and assent of each deputy groups (grouping by province). For detail, see Cai, *Institution of the Chinese People's Congress*. p. 234.

[10] Shunhua Wang, "Carrying Forward Socialist Democracy, Perfecting Socialist Legality," in *The Collection of Essay on Constitution (Xianfa Lunwenji) (Fayang Shehui Zhuyi Minzhu, Jianquan Shehuizhuyi Fazhi)*, ed. Youyu Zhang, (Beijing: Qunzhong Press, 1982). pp. 89-93; Bingzhu Sun, "On Npcsc's Law-making Power," in *The Collection of Essay on Constitution (Xianfa Lunwenji) (Lun Quanguo Renda Changweihui de Lifaquan)*, ed. Youyu Zhang, (Beijing: Qunzhong Press, 1982). pp. 256-62.

go against that of the people. To use Zhang's language, *"there is no incoherence between the interests of the party and our country"*.[11] The effects of this consciousness on their designs of new institutions were at least two fold.

First, it pushed the party whip to an unprecedented manner that stressed a kind of 'absolute obedience'. The OMIE such as Zhang stressed that for those NPC deputies who also were CPC members, their primary concern should be the wishes of the party first and the role of being a NPC deputy comes in the second place.[12] Second, regarding the previously mentioned criteria for the selection of deputies that resulted in a lack of remonstrative deputies (see chapter eight), it is undeniable that the OMIE had a clear inclination to make some changes. In an article written by Pi, for example, allocating seats for the purpose of positive discrimination was criticised because it did not help increase the NPC's representative function. Pi's article also criticised the custom of rewarding someone's outstanding work by granting them deputyship.[13] However, more importantly, the OMIE did not attempt to challenge the party-controlled nomination (deputy selection) process which, according to chapter eight, was the foremost reason for the deputies' passivity and lack of responsibility to the voters. In the article cited above, Pi criticised the fact that deputy elections had been merely nominal and that voters lacked sufficient information about candidates. However, he did not advocate a transparent candidate nomination process. The OMIE's many similar neglects reduced their contribution to the increase in the NPC representative function. Arguably, even if voters voted for their deputies and were fully informed about their candidates, there was still a possibility for the party to choose subordinate deputies by simply preventing the entry of any remonstrative candidates in the list. A typical example from Que's article based on the Marxist legislative tenets, called for general elections of the NPC's deputies. However, it did not question seats allocation that should have been done prior to the voting. To the contrary, it asked for a more exquisitely designed allocating of seats.[14]

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[11] Youyu Zhang, "Selected Research Writings of Zhang Youyu," (Beijing: Beijing Normal University Press, 1992). p. 439.

[12] Quite similar to the abovementioned NPC staff members' claims, this claim did not specifically discuss the Party whip in typical foreign political systems (e.g. Party whip in U.S. is rather weak than that in UK); it also selectively ignored many facts showing the wide existence and recognition of cross Party vote in many "bourgeois" legislatures.

[13] Chunxie Pi and Xinyong Mou, "A Crucial Task of Political Reform: On Perfecting the PCs (Zhengzhi tizhi gaige de yixiang zhongyao renwu - tantan jianquan renmin daibiaodahui zhidu)." *Legal Study and Research (Falv Xuexi yu Yanjiu - now renamed Faxuejia)*, no. 8 (1986): 15-18

[14] Ke Kan, "On Criteria of Fixing Deputy Number in the NPC (Renmin daibiaodahui daibiao ming'e

The second uniformity that the OMIE claimed was a unified and nation-wide interest shared by all people in China, although they did not deny regional, professional, and other diversities. Its immediate expression in the OMIE's institutional designs was their claim that deputies should represent the Chinese people as a whole, and nation-wide interests should have priority over local interests.[15] This consciousness seems to demonstrate the reason for not having observable institutional designs aimed at providing remonstrative deputies with institutional support. More saliently, articles written by this group of influencers persuading deputies not to individually get in touch with the grassroots masses and not to get involved in their petitions for grievances were also observed.[16]

4. Supervision

The OMIE in the 1980s deliberately followed the power holders' demands for the NPC's supervisory function. To be specific, the OMIE had dual demands: (1) with the pragmatic purpose of pushing forward economic development, it required the NPC to examine the executive activities. (2) To prevent the re-emergence of the 'rule by an individual' tragedy. Primary data illustrates that their corresponding institutional designs aimed primarily to stress the NPC's role as preventing the executive activities and decisions in contradictory laws, particularly the Constitution.[17] This area of focus can clearly find its origin in the power holders' demand for the NPC to oversee primarily the executive's activities in contradictory laws.

It is important to highlight the fact that different groups of influencers may have different understanding of the NPC's 'law guardian' role. The OMIE's legal and political educational background made them not only aware of any executive *processes and outcomes* that went against laws (particularly the Constitution) but also aware of the *institutional designs* that failed to comply with the institutional principles stated in the Constitution and other organic laws.

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queding yiju tantao) " *Journal of Political Science (Zhengzhixue Yanjiu)*, no. 5 (1987): 32-37.
[15] Zhang, *Selected Research Writings of Zhang Youyu*. p. 444; Yezhong Zhou, "On the Advancement of the People's Congress System (Lun renmindaibiaodahui zhidu de youyuexing) " *Law Review (Faxue Pinglun)*, no. 5 (1990): 6-13.
[16] Zhang, *Selected Research Writings of Zhang Youyu*. p. 448.
[17] Such as the establishment of a constitutional committee. Daohui Guo et al., *Legislation: Principle, System, Technique (Lifa - yuanze zhidu jishu),* (Beijing: Beijing University Press, 1994). pp. 207-09.

Such awareness is worth highlighting, because it resulted in the OMIE's greater demand for the NPC's function of the examination of government processes and outcomes. Specifically, many executive activities that could not be judged with legal provisions were thus included in the OMIE's list of legislative supervision. Their expertise in legal-political studies that were on the basis of classic Marxist doctrines highlighted the fact that the NPC could do very little in overseeing the executive was inconsistent with laws. In particular, it clearly conflicted with the orthodox Marxist doctrine of legislative-executive relations and the laws made based on the doctrine. According to their writings, the most important and typical new design was lined to the NPC's function of examining budget and final accounts, which was one of the NPC's crucial functions given by the Constitution but, for the reason of lacking specific laws or regulations, was in fact completely nominal. Accordingly, there were several institutional designs aiming to reduce the institutional handicaps hampering the fulfilment of such functions. For example, an article highlighted an institutional flaw that the NPC's Plenary Session meeting was normally held in April or even later; at that time, the annual budget would have been carried out for more than four months, leaving the budget examination a futile exercise.[18]

However, it should be pointed out that stressing only, or largely, the Constitution and other laws had an inherent defect because it contributed little to the NPC in increasing its 'regime failsafe' function. Highlighting the following crucial but normally ignored fact may help clarify this argument. The 1982 Constitution and the 1982 NPC Organic Law, the two most crucial laws for the NPC, stated nothing about the NPC-party relationship. Furthermore, those two laws did not mention the party at all (even the word 'party' never appears in the two laws). This fact quite saliently illustrated that in the 1980s the CPC was indeed an organisation staying outside and dominating on the political institutions. This position resulted in the fact that the OMIE who responded to the CPC's wish to increase the NPC's 'regime failsafe' function by proposing new institutional designs never considered the party matter. They claimed that the NPC should be the highest state power; however, as the party established its supremacy over all institutions, it was understood by the people of this group to be a power above the highest power. Such an understanding of the party-NPC relationship was echoed by their institutional designs. On the one hand, the OMIE stressed that the NPC's position of the highest state power should be practiced in specific institutional designs. On the

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[18] Pi and Mou, "A Crucial Task of Political Reform: On Perfecting the PCs "

other hand, they stressed the party's unquestionable power to lead the NPC.[19] As previously discussed, the regime 'failsafe' function could be fulfilled only if the NPC was the highest among any political powers, including the party.

II. Nationalism Influenced liberal democratic intellectual elite

In this thesis the nationalism influenced liberal democratic intellectual elite (NILDIE) was the first group of influencers that had their intellectual background on a liberal democratic basis. In general, the NILDIE's liberal democratic intellectual ideas resulted in a distinctive feature of not using Marxist doctrines as a basis of their intellectual foundation in their writings. Although the censorship made it not possible for them to overtly challenge Marxism, in their writings they avoided using Marxist discourses such as 'bourgeois legislature' or 'class struggle'.[20] Some of them even denied the CPC's role of proletariat vanguard (although they all see the CPC as an irreplaceable leader of the country). In the same vein, the conviction argument style (discussed in chapter eight) was also avoided, thus key concepts of liberal democratic intellectual ideas, such as checks and balances, the rule of law, and seeing political power as created by a social contract, became the foundation of their argument. Following the intellectual spectrum, the NILDIE could be located in the (B_1-C_1) of the spectrum.

1. General Outline

The NILDIE became an influential advocate demanding liberal democratic oriented legislative reforms largely because of their opportunities to gain influence by making their voice 'loud enough' to be heard. One surprising fact was their strong control over mass media that might have gone beyond that of the OMIE. In the 1980s the NILDIE had their own weekly newspaper, including the widely influential *world economic herald (WEH, shijie jingji daobao)*. They could even make their voice heard in official newspapers. The salient example was the weekly supplement "voice of the masses (Qunzhong Zhisheng)" in the *Workers' daily (Gongren Ribao)*. The reason for them to

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[19] Zhang, "An Issue Worth Seriously Studying and Discussing "

[20] See Xin Zhang, *Current Situation and Issues of Legality in Mainland China (Dalu fazhi zhi xianzhuang ji wenti),* (Taipei: Weili Law Press, 1988). pp. 15-16. The author studied and lectured at Beijing University; he was also member of CASS and the editor of *Chinese Journal of Law* (a leading Chinese academic journal in legal studies).

have strong linkage and control over mass media came from both external and internal factors. On the one hand was the relatively relaxed ideological control.[21] On the other hand, because of their nationalist nature, the changes they advocated, as well as the strategies they used to advocate, were not radical. Their use of 'legitimising power' and 'criticising power' strategies avoided a direct confrontation with the authority.

However, compared with the NILDIE's society-wide influence, it is notable that the role they played in the 1980s NPC development was passive and not remarkable. This incompatibility came from two crucial particularities of their intellectual background. First and most crucial, the NILDIE's intellectual background, although having a liberal democratic essence, was influenced by the strong nationalist nature. As mentioned previously, nationalism in China always led to the appreciation of efficiency and a centralised and authoritarian political power. In his research on China's modernisation process, Rozman highlighted the social elite's strong feeling of having the mission of leading the national salvation. Such feeling was also accompanied by a consciousness that those elite had a profound foresight to sequence and rank the values (or the targets) of social development.[22] In the 1980s, the NILDIE reached to a consensus that a firm, strong, and solid leadership should be the priority of social development.

Consequently, the NILDIE's demand for the NPC functions originated not from the consciousness that the legislatures should be an indispensable institution for modern representative democracy, in which the sovereignty of people was practiced by deputies' representative activities. Instead, they saw the legislatures as part of 'state apparatus' that served to pursue national greatness. Their emphases on the importance of a centralised political power made them not only deny any bottom-up petition but also appreciate bottom-up obedience.[23]

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[21] An interviewee who was one of the chief editors of the "voice of the masses" even mentioned the collaboration of authority and scholars, in which certain open minded power holders tolerated and even advocated the existence of non-Marxism thoughts. Interview, 27-11-2011.

[22] Gilbert Rozman and Thomas P. Bernstein, *The Modernization of China,* (New York; London: Free Press ; Collier Macmillan, 1981). p.312.

[23] One of the NILDIE interviewee used an analogy to show what the NILDIE like him felt in the 1980s: It was just like a band of gangsters (likens to Western superpowers) rushes into a kindergarten (China in national backwardness). Trying to protect young children (the masses), few security guards (rulers) should take actions to hide the children. In ensuring their hidden place will not be detected, the guards must kill any child crying loudly. Moreover, once the guards have decided to launch counter attack, all children should strictly follow the order of the guards to throw stones to the gangsters simultaneously because any single stone would not harm the gangsters. Interview, 27-11-2011.

In his philosophical reflection to NAZI genocide, Bauman introduces the concept 'garden culture' to illustrate an artificial design for an ideal life and a perfect arrangement of human conditions. Its essence was "*the endemic distrust of spontaneity and its longing for a better, and necessarily artificial, order*", in which "*weeds must die not so much because of what they are, as because of what the beautiful, orderly garden ought to be*".[24] This concept can be borrowed to illustrate the NILDIE's thought in the 1980s: China must catch up the 'pace' of the super powers because of national humiliation. This means that the spontaneous development strategy should be replaced by an artificial and manipulated strategy. Such strategy comprised of two elements: (1) an indisputable authority, like a gardener that 'dominates' the garden and has the authority to remove or cut any plants; (2) a subordinate masses. Once the 'gardener' decides it is a weed and should be removed, it must be removed.

A significant change of the NILDIE's intellectual ideas in the last two years of the 1980s is particularly worth highlighting. During these two years the NILDIE's nationalist essence became stronger.[25] The impact of outside factors (e.g. social unrest in the Eastern Europe former Soviet countries) further strengthened this essence. Therefore, part of the NILDIE gradually had a notion appreciating a monopolised central political power, and an authoritarian regime in particular. The clear signs of these changes were the discussion on China's 'global membership (Qiuji)'[26] and its ensuing advocating for neo-authoritarianism as a countermeasure.[27] Both of them illustrated the intellectual changes that the increase of nationalism gradually encroached into the liberal democratic ideas. The specific characteristics of these changes were twofold: (1) it claimed that economic liberty was more important than political democracy, for which authoritarian politics was tolerated because it encouraged the

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[24] Zygmunt Bauman, *Modernity and the Holocaust,* (Cambridge: Polity Press, 1989). p. 92.
[25] Randall Peerenboom, *China Modernizes : Threat to the West or Model for the Rest?,* (Oxford ; New York: Oxford University Press, 2007). pp. 5-8.
[26] This term was literally derived from the Household Register (Hu ji) System, under which criminals would be deprived of their household register of their living place. Since citizen cannot live in a place without their household registered, deprivation of Huji can be equated to a kind of ostracism. The global membership means China's eligibility to survive as a state in the world; many NILDIE claimed that if the national humiliation remains, China would be deprived of global membership (its advocates' normally seen language was "we will be deprived of the global membership" because of our weakness if we still avoid reform). Clearly, 'global membership' is a radical expression of Social Darwinism that was not firstly seen in China. See Yi Lu et al., *Global Membership: A Choice of Century (Qiuji: yige shijixing de xuanze),* (Shanghai: Baijia Press, 1989).Passim; in particular, pp. 13, 69,113, 129.
[27] Neo-authoritarianism was also called neo-conservatism in Western academic literature for its emphasis on gradual and governmental-led social changed. see Joseph Fewsmith, "Neoconservatism and the End of the Dengist Era " *Asian Survey,* 35, no. 7 (1995): 635-51.

development of a market economy and kept society stable. Both functions were regarded by neo-authoritarianists to be the prerequisite of economic liberty and the ensuing economic growth. (2) It claimed the existence of a 'general well' that had a higher value than local or individual interests. Based on this, the NILDIE claimed that the difference between dictatorship and neo-authoritarianism was that in the former type the dictator went against 'general will'; whereas in the latter, social elite and authoritarian politics were committed to the fulfilment of 'general well'. As the 'general well' in the 1980s was national greatness, it automatically became neo-authoritarianists' priority concern.[28]

The above listed characteristics illustrate the greatness of the impact of nationalism. Neo-authoritarianism's most crucial impact on the NILDIE was to reduce their vigilance against the rise of a monopolised political power. In fact, although they kept using liberal democratic discourses such as 'general well' and avoided using class-based discourses, they had been quite similar to the OMIE in some areas, such as the understanding of the politic-society relationship. Moreover, since not all of the NILDIE became advocators of neo-authoritarianism,[29] the rise of this new idea created a rift among the people in this group and resulted in the conflicts that also made the NILDIE reformers less influential.

The NILDIE's second particularity came from the negative effects of an unsystematic and restricted importation of foreign liberal democratic intellectual ideas (discussed in chapter six). Lacking theoretical support, they had difficulty in design and advocating institutional changes; instead, their institutional designs had their origin largely in the party's policy guidelines. In the author's interviews, all five reform activist interviewees who can more or less be identified as belonging to the NILDIE confirmed that their blueprint of political reform was on the basis of the party's reform guideline of 'separating the party and government'.[30] Lacking or having distorted understanding of

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[28] Jie Yan and Hai Yu, "The Essence of Democracy and Authority (Minzhu yu quanwei de shizhi: quanli jieding yu ziyou xuanze) " *Exploration and free views (Tansuo yu Zhengming)*, no. 4 (1989): 14-18; Keping Yu, "On Authoritarianism - with a Brief on Neo-Authoritarianism (Lun quanwei zhuyi - jian tan "xin quanwei zhuyi") " *Comparative economic and social systems (jingji shehui tizhi bijiao)*, no. 3 (1989).

[29] For example, Jian Rong, "China's Misunderstandings toward Neo-Authoritarianism (xin quanwei zhuyi: zhongguo de wuqu) " *Open Times (kaifang shidai)*, no. 5 (1989): 6-11.

[30] In answering to the question trying to see which aspect of NPC reform was their greatest concern in the 1980s, they all pointed out the Party's too much intervention on the NPC; as amelioration, they thought that the Party's attempts to separate Party and government should be an elixir. See also "Reputed scholars in Beijing talked freely on political reform (Shoudu bufen zhuming xuezhe changtan zhengzhi tizhi gaige)" newsletter in *Xinhua Digest*, issue 10 (1987): 12-14. This research

Western political system can be more remarkably observed from the NILDIE whose expertise was not in legal politics.[31] Considering the fact that in the 1980s the majority of this type of intellectual elite were not experts in legal politics, a lack of knowledge was by no means a single case. In the abovementioned book discussing the 'global membership', only in two articles can it be seen appreciating and advocating the rule of law and more learning from foreign institutional designs. The authors of these articles have either an expertise in law or an overseas study experience.[32]

These two particularities mentioned above cannot deny the fact that these intellectual elite knew the roles and functions that the NPC should have (as stated in laws). However, interviews illustrated that NPC institutional developments were not their primary concern. An NILDIE interviewee said that he only expressed his dissatisfaction by writing nothing on the ballot; also, many of his colleagues had a pre-settled image that the NPC was merely a "*rubber stamp of the largest size*".[33] Another interviewee said that his, and his classmates', understanding of the NPC was no more than "*the basic knowledge written in textbooks for students majored in politics*".[34]

2. Decision-making

Regarding the NPC's decision-making function, primary evidence shows that although the NPC developments were not the NILDIE reformers' primary concern, they had a focus on the party-legislature relationship. This focus illustrated the NILDIE's greater concern with the reforms of the inter-institutional relationship that should be much fundamental than that of the intra-institutional matters. This was also the major difference to the OMIE. The highlight of such focus was the claim that the CPC should be a party in the legislature to make decisions, instead of being an overwhelming power staying above the legislature.

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claims that their longing for a legislature without a Party saliently illustrates their lack of understanding of foreign political system as that thing is not possible in modern political system because political Party plays a vital role in representative democracy.

[31] Interview, 29-09-2011.

[32] Zonghou Zhang, "The Establishment of Role of Law Society Is a Necessary Step of China's Modernisation *(Jianli fazhi shehui shi zhongguo xiandaihua de biyou zhilu)*," in *Global Membership: A Choice of Century (Qiuji: Yige Shijixing De Xuanze)*, ed. Yi Lu, et al., (Shanghai: Baijia Press, 1989). pp. 315-24; Haocheng Yu, "Will China Be Deprived Of "Global Membership"? ," in *Ibid.* pp. 217-25.

[33] Interview, 20-09-2011.

[34] Interview, 11-10-2011.

The NILDIE's intellectual idea comprising of both liberal democratic ideas and the nationalist concern with strong political power explain this particularity. On the one hand, the NILDIE's liberal democratic ideas contradicted the Party's vanguard position that was legitimised by the Marxist class-based discourse. Instead, the NILDIE's liberal democratic intellectual ideas resulted in their preference of a party having its legitimacy on the basis of the Weberian rational grounds, namely, *"resting on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands"*.[35] In fulfilling their demand for a party making decisions in the legislature, they took a strategy of borrowing and deliberately misinterpreting the party's policy guideline that was 'the separation between the party and the government'. It is worth stressing that its original meaning did not include any change of the party-NPC relationship. However, documentary evidence shows that the NILDIE's use of this guideline highlighted its adaptation in adjusting the party-legislature relation that buttressed the NILDIE's demand for a new party-legislature relation without directly challenging the CPC's authority.[36]

On the other hand, the NILDIE's liberal democratic ideas were not strong enough to facilitate an introduction of the 'rule of law' principle in the decision-making related institutional design. For in doing that required not only the NPC's authority to transform party decisions into state policy, but also required legal constraints. Without such constraints, the decision making process would still be under the rule by law principle. The primary reason for the NILDIE not to develop the legal constraints was nationalism and its resulting favour with a Leviathan-like political power. Correspondingly, the NILDIE's institutional designs had a clear characteristic of having no designs to prevent the advocated party-in-legislature principle from being merely nominal. In other words, the NILDIE's advocacy for the party's entering in the legislature stopped where the party's power on making decision freely was encroached upon. Moreover, lacking knowledge about foreign political systems, particularly the institutional designs on party-legislative relations resulted in the NILDIE's many hybrid institutional designs that were made by simply 'adding and mixing' certain foreign 'features' in the existing system. In so doing, it resulted in many of their designs having no practicability in guiding the NPC institutional reforms. An example of such a design was the

[35] Max Weber, *Economy and Society: An Outline of Interpretive Sociology,* (Berkeley: University of California Press, 1978). p. 215.
[36] Jue Fang, "Party Goes into the NPC - on Gorbachev's Design of Party-Governmental Separation (Dang dao renmindaibiaodahui zhong qu) " *Journal of Political Science (Zhengzhixue Yanjiu)*, no. 6 (1988): 52-55.

introduction of the "Constitutional 'Partiachy' (Dangzhu Lixianzhi)," [37] which was merely a superficial borrowing from British Constitutional Monarchy. [38]

Meanwhile, the NILDIE also focused on the intra-NPC institutional designs connecting to the decision making function. In this area, the combination of two ideas (liberal democratic and nationalist ideas) resulted in a dilemma between strengthening the Standing Committee and the Plenary Session. Compared with the previously discussed Marxism-based influencers whose primary focus was on strengthening the Standing Committee, the NILDIE's dissatisfaction at a weak Plenary Session was a major difference worth highlighting. As one of China's first post CR PhD in politics, Yu urged institutional changes so as to strengthening the NPC's low efficiency law-making function in an article published in 1989. It is notable that regarding the institutional design in strengthening the Standing Committee that was the most commonly seen institutional designs aiming at strengthening the decision-making function, it was clearly rejected by Yu. According to him, it could be used as a perfect excuse for depriving Plenary Session deputies' power in making decisions. [39]

However, some NILDIE did not go that far and still focused on making changes in the Standing Committee. In an article in the *WEH*, Cao[40] claimed that making substantial institutional changes in the Standing Committee should be a vital and necessary way of strengthening the law-making function. His corresponding institutional designs comprised the full time deputyship, increasing Standing Committee meeting frequency within fixed interval (once per month), as well as removing those Standing Committee deputies being too old to engage in full time work (Cao even gave a criteria of eight hours daily working). [41]

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[37] "Partiachy" is derived from "monarchy" Literally means Party has sovereignty; however, the political power is separated and controlled by the legislature.

[38] Dasheng Liu, "On 'Constitutional Partiachy': A Discussion on the Proper Political Sytem of the Primary State of Socialism (shilun 'dangzhu lixian zhi'- guanyu shehui zhuyi chuji jieduan heshi zhengti zhi tantao) " *Social Science (Shehui Kexue)*, no. 7 (1989). pp. 24-27.

[39] Keping Yu, "On Structual-Functional Character of Contemporary Chinese Politics (Lun dangdai zhongguozhengzhi de jiegougongneng tezheng) " *Seeker (Qiusuo)*, no. 1 (1989): 42-46 (70). Further discussion can be found in Zhao and Zhang, *The Legislative and Electoral System of P.R. China*. pp. 116-21.

[40] Cao was a well known liberal democratic scholar advocating constitutionalism and market economy; he was also a research fellow serving in the central government's semi-official think-tank organisation – the National Commission for Economic Reform (jingji tizhi gaige weiyuanhui).

[41] Siyuan Cao, "A Journey of a Thousand Miles Begins with One Step - the Third Discussion on Socialist Parliamentary Democracy (Qianlizhixing shiyuzuxia - sanlun shehuizhuyi yihui minzhu de jianshe) " *the WEH,* (28-11-1988).

3. Representation

In the 1980s the representative function was the NILDIE's primary concern. The reason for this was arguably the particularity of this function: as the following discussion illustrates, improvements of the representative function not necessarily reduce the strength of political power and administrative efficiency. Therefore, the NILDIE's nationalist nature did not hamper their attempts at strengthening this function. This characteristic was particularly remarkable compared with the decision-making function and the supervisory function. For example, a democratic decision-making process would directly increase legislative viscosity (e.g. by extending time consumption in legislative debate). However, a competitive and less controlled deputy electoral system would not necessarily result in the same thing. Another possible reason for the NILDIE's focus on this function would be the abovementioned domestic intellectual idea seeing representation activities as fundamental (see the discussion of the reason of having remonstrative deputies in chapter eight).

The immediate expression of the NILDIE's liberal democratic ideas on the representative function was their dissatisfaction at the fact that the deputies were 'selected' by a series of criteria, which was accused of recruiting a large number of incompetent deputies. Correspondingly, many innovative designs were made with the aim to strengthen this function by increasing deputy quality. The most commonly seen designs of these kinds were those related to electoral campaigning. [42] The related designs were not possible and not to be observed from the orthodox Marxist influencers who clearly rejected and denounced electoral campaigning to be a typical bourgeois legislative trick. Trying not to directly challenge the power holders' taboo, related institutional designs were normally camouflaged by stressing that campaigns should be under the leadership of the party. [43] As a result, they avoided discussing the inevitable conflict between the party control and electoral campaigning that was free from manipulation. Moreover, in dividing an electoral process into four major stages that are electoral related agenda-setting (e.g. the establishment of constituency and the selection

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[42]Xianju Wang, "Pressing Issues of Perfecting People's Congress System (Wanshan renmindaibiao dahui zhidu de jige poqie wenti) " *Modern Law Science (Xiandai Faxue)*, no. 5 (1988): 26-29; Heren Liu and Liancheng Sun, *Basic Designs of Political Reform (Zhengzhi tizhi gaige de jiben gouxiang),* (Beijing: Guangming Daily Press, 1988). pp. 54-57; Li, "People's Congress Voting Institutions and the Invisaged Reforms"; Cao, "A Journey of a Thousand Miles Begins with One Step - the Third Discussion on Socialist Parliamentary Democracy "

[43] See Cao, "A Journey of a Thousand Miles Begins with One Step - the Third Discussion on Socialist Parliamentary Democracy"; Li, "People's Congress Voting Institutions and the Invisaged Reforms".

of an electoral system), candidate nominating, campaigning, and polling, it can be seen that campaigning was less important stage in democratising an election. [44] The NILDIE's stressing of the party guided campaigning should be regarded as a concession for it did not challenge the party's control on other more crucial stages, although it was more progressive than the claims by the influencers in the Marxist 'camp'.

Another improvement of the NILDIE was their advocacy for a strengthened and free-from-manipulation voter-deputy tie, through which deputies would be held accountable to the masses. Its corresponding institutional designs aimed to weaken the party control over deputies as well as to let the voters decide in the deputy elections, rather that the party.[45] It was the first time that the party domination was challenged and the voter's rights were highlighted. In contrast, as previously mentioned, influencers from the Marxist camp attempted to improve the NPC representative function by stressing only a top-down direction representation lead by the party. Also under the descriptive representative consciousness, reformers in the Marxist 'camp' claimed that deputies under the control of the party would unquestionably fight for the interest of the masses.

This contrast illustrated that the changes of intellectual background, particularly the encroaching upon the vanguard consciousness and the idea of descriptive representation, were largely responsible for the NILDIE's new advocates. The direct evidence of such encroachment was the articles eloquently stressing that alienation could happen in any power holders despite their class attribute and moral standard, under which the interest groups would no longer speak for the masses.[46] An article in the *'The Voice of the Masses'* wrote that:

> *Laws' function in promoting democracy should be paid with special*
> *attention during political reform. In doing so, we should not only*
> *accelerate the making of the laws guarding people's democratic rights,*
> *but should also make sure that those who represent the interests of the*
> *masses can participate into the law-making process, rather than letting*
> *those who represents certain interest groups or higher social strata*

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[44] Electoral campaigns would contribute to an increase to democracy; however, a non-manipulated candidate nomination stage without allocation of seats should be its prerequisite.

[45] Li Yang, "On Democracy inside the NPC (Renmin daibiaodahui neibu minzhu jizhi tantao) " *Political Science and Law (Zhengzhi yu Falv)*, no. 4 (1988): 14-16

[46] In this place the role of intellectual enlightenment of Djilas' influential book *the New Class* can be clearly witnessed.

control the law-making process. By which the form and substance of democracy can both be fulfilled.[47]

However, this improvement was not without limitations. A consciousness can be witnessed that saw the ruling party, the masses, and the legislature as three mutually independent institutions and saw the result of the changes of their institutional relationship as zero-sum (The gaining of one's power is at the cost of another one's lost). This consciousness was in conflict with modern representative democracy and the corresponding modern party politics that regard political party as a bridge that organise and conveys the people's wishes and choices.[48] The NILDIE kept attempting to eliminate the party from the legislature; which, to some extent illustrated their attempt at creating a legislature without a party.

More importantly, the NILDIE's advocacy for a closer deputy-voter linkage did not result in their demand for a mechanism that compels the deputies to fight for the voters' interests. Its expression in the institutional indicators was the non-existence of any institutional designs aiming to make deputies more remonstrative. A typical article suggested that the lack of such demand had strong linkage to nationalism. In this article disproving the consciousness seeing the legislature as a 'phony organ of idle talk' that hampers administrative efficiency, Cao claimed that the legislature will not affect efficiency because its role was merely a 'cushion' between the masses and the government and that its duty was to collect opinion of the masses and convey them to the government. Therefore, the government would not feel embarrassed in facing various and even conflicting opinions.[49]

Another limitation, originating from the NILDIE's appreciation of administrative efficiency, was the lack of institutional designs providing different interests with sufficient time and place to bargain. The NILDIE's liberal democratic intellectual ideas resulted in their acknowledgement of the existence of regional interest conflicts and the

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[47] Wang and Hu, "Political Reform and the Development of the Legal System," Workers' Daily (25-12-1987).

[48] Recent studies of political party highlights its essential role in representing the major claims of certain part of people in a pluralised society. It should never be an institution staying outside or above the people or institutions, particularly the legislature. See Peter Mair, *Party System Change: Approaches and Interpretations,* (Oxford; New York: Clarendon Press; Oxford University Press, 1997). pp. 21-22; Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis Vol.1,* (Cambridge Cambridge University Press, 1976). pp. 18-24.

[49] Siyuan Cao, "The Secure Channel of Political Reform: The Second Discussion on Socialist Parliamentary Democracy (Zhengzhi tizhi gaige de anquan tongdao - zai yi shehuizhuyi yihui minzhu zhilu) " *The WEH,* (21-11-1988).

necessity for protecting local interests. [50] However, these ideas were not strong enough for them to advocate any new institutional designs. Cao's claim that lobbying groups and activities should be allowed was one of the only few observed exceptions of this kind. [51]

4. Supervision

The theoretical framework divides the supervisory function into two sub-functions: examination of government processes and outcomes, as well as the regime failsafe. Following this bifurcation, the NILDIE's attitude toward the NPC's supervisory function could be identified as demanding for more power in fulfilling both sub-functions. It is worth highlighting that this is the first time for this research to observe a group of reform influencers demanded for the NPC's 'regime failsafe' function. This research claims that the advocates of this function can only be the reform influencers with a liberal democratic intellectual background because it gave its believers a profound understanding in the following two areas.

Compared with the influencers believing in the Marxist tenets that deny discussing the situation that political power, particularly the party, may be corrupt, the NILDIE's first profundity was to focus on the danger of an unchecked party. They realised that the party dominance was also in peril of resulting in the reappearance of the CR tragedy because any power had potential to corrupt. Regarding overseeing the ruling party, the NILDIE's second profundity was more important. As previously mentioned, orthodox Marxists seldom mentioned the necessity for an institutionalised external 'examiner' for the CPC's activities and decisions. [52] Correspondingly, in seeing legislative elections as a bourgeois legislative trick, they ignored one of the most important functions of the elections, VIZ. an external constraint on party activities. To the contrary, the NILDIE in the 1980s started discussing the establishment of external supervision mechanisms. The rising checks and balances concepts was arguably responsible for this contrast. The below citations are selected from an article in the *Worker's Daily*'s supplement "Voice

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[50] See, for example, Liu and Sun, *Basic Designs of Political Reform*. p. 59.

[51] Cao, "A Journey of a Thousand Miles Begins with One Step - the Third Discussion on Socialist Parliamentary Democracy".

[52] It is crucial to highlight that even before capturing political power in 1949, the Party leaders endlessly stressed 'letting the people oversee the party'; however it was merely empty slogans with no institutional support.

of the Mass":

> *1. The ubiquitous history of political development has been a history of the development of the checks and balances toward political power;*
>
> *2. Under the condition that our socialist society still witnesses the separation of those who owns political power and those who, in reality, controls political power, to establish a firm checks and balances institution should be a fundamental steps of fulfilling political democracy;[53] and therefore,*
>
> *3. It is a fatal mistake to see the checks of political power as "the capitalism's patent."* [54]

As the above quotations show, only on liberal democratic intellectual background, in which two of the Marxist intellectual tenets were no longer influential, can support innovative institutional designs outstripping those Marxism-based designs that primarily focused on preventing any personal ambition rather than the corruption of the ruling party. [55] Correspondingly, the NILDIE's institutional design regarding the regime failsafe function highlighted the NPC's role in providing an institutionalised mechanism for overseeing party activities. Documentary evidence shows that such demands were largely in two types.

In the first minimal type, evidence illustrates that the NILDIE advocated the NPC's role in overseeing the party. However, due to their avoidance of directly challenging the party's taboo, articles of this kind expressed the demand indirectly. A salient example was the article written by Wang, in which the demand was camouflaged by the CPC's

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[53] This point is extremely crucial since official propaganda claims that the most fundamental difference of socialist democracy and bourgeois democracy is that the former enables the commons to *de facto* enjoy their democratic rights by participating or even controlling the state power, which has been also the excuse for rejecting the checks and balances system; however this article clearly claims that people cannot directly do so in socialist state, which shacks the very foundation of the socialist democracy theory.

[54] Zhou, "Checking Political Power and Political Democracy," *Workers' Daily* (11-12-1987).

[55] However, it should be pointed out that 'checks and balances' in the NILDIE's discourse in the 1980s, unless specially defined, did not automatically mean the separation of the three branches. The reason for that was (1) the institutional designs fixed by the constitution granted the NPC the status of highest organ of state power; (2) the influencers' (primarily those law experts, despite their intellectual background) deliberately avoidance of stressing the legislatures' power in supervising the judicial institutions (Courts and Procuratorates), which may threaten the judicial independence. Haocheng Yu, "The Establishment of Rule of Law and Political Reform (Fazhi jianshe yu zhengzhitizhi gaige) " *The WEH,* (11-01-1988).

policy guideline regarding the separation of the party and the executive.[56] In the same vein, the author avoided making detailed institutional designs that would be much easier to trespass the power holders' 'bottom line' although the checks and balances principle was directly claimed. This article thus had many empty slogans but few specific institutional designs.[57]

The second type directly stressed that the NPC's regime failsafe function could be fulfilled only if the party was under the supervision of the NPC.[58] Compared with the first type in which the demand was buttressed by the party's policy guideline, the second type stressed the 1982 Constitution granting the NPC with the highest authority. Therefore, their demand for the NPC's role in overseeing party activities was buttressed by the authority of the Constitution. In doing so, the NILDIE killed two birds with one stone: the demand had a strong institutional support while having a lower risk of conflicting with the authority.[59] However, examples of the NILDIE to directly question the two Marxist intellectual tenets could be found in rare cases as the majority of them tried everything to prevent the clash with the authority. Fang's article, as an example of directly questioning, claimed that the party's vanguard role existed only during the revolutionary period, [60] at which exigent and pressing situation required a strong leadership; whereas during peacetime, political power should be controlled by the political institutions (the executive, legislative, and two judicial organs) with power to oversee the activities of the party.[61]

The second type of demand also lacked clear and feasible new institutional designs. Taking the above cited articles as an example, the article by Wang did not mention any designs. Fang's article came up with no designs but a simple suggestion to borrow Gorbachev's reforms of the Soviet Union's Supreme Soviet that tried to put the party under legislative supervision. Considering the fact that Gorbachev's reform was widely known in China for ruin the Russian economy, such importation was not possible to be acceptable. Ironically, the above mentioned article from *'voice of the masses'* that

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[56] Huning Wang, "Reflections from the Cultural Revolution and Political Reform (Wenge fansi yu zhengzhi tizhi gaige) " *The WEH,* (05-1986).

[57] I.bid.

[58] For example, see Wang, "Pressing issues of perfecting People's Congress system".

[59] Shaoquan Qiu, "Political Reform Should Start at Practising People's Congress Institutional Designs in the Constitution (Zhengzhi tizhi gaige ying cong luoshi xianfa zhong de renmindaibiaodahui zhidu kaishi) " *Party & government forum (Dangzheng luntan)*, no. 1 (1987): 27-28.

[60] This period refers to the CPC history before 1949, when the War against Japanese invasion and the civil war was the CPC's primary concern.

[61] Fang, "Party Goes into the NPC - on Gorbachev's Design of Party-Governmental Separation".

eloquently demanded for the checks and balances system finally concluded that inner-party democracy was the solution at the current stage (the 1980s).

The NILDIE's liberal democratic intellectual ideas provided them with a remarkably wider outlook, by which their institutional designs in fulfilling their demands for the NPC's function of examination of government processes and outcomes, another branch of the NPC's supervisory function, were clearly more subtle, ambitious, and accurate. This contrasted with their passivity in improving the NPC's regime failsafe function by new institutions.

Specifically, it is observed that the NILDIE demanded the NPC to oversee government's processes and outcomes in contradictory laws. This demand was quite common in other groups of influencers. For the NILDIE, their achievements outstripped that of other groups because of their clear demand for the establishment of an institution and organisation for judicial review (Wei Xian Shen Cha) that had been always regarded by the Marxists as a typical expression of the bourgeois political trick.[62] Interestingly, this terminology was less commonly observed from those Marxist-based reform influencers, although Marxist reformers like Liu and Cheng (see chapter eight) also demanded an organisation to review government processes and outcomes to ensure consistency in the Constitution. This contrast was by no means merely a matter of terminology; instead, it was the expression of a clear intellectual bifurcation worth highlighting. Evidence illustrates that, as a unique characteristic, the NILDIE's demand for a NPC's committee or section that was responsible for judicial review was based on the awareness that laws and decisions made in the state legislature could be unconstitutional. Therefore, their designed institution will have the authority to nullify the NPC's legislation that contradicted the Constitution.[63]

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[62] The rigid meaning of judicial review, in American system, refers to the power of the judicial branch to review and annul the laws or regulations believed to be incompatible with the Constitution. However, as the judicial power in China is subject to the legislatures, when this term was introduced by the NILDIE, it refers to an activity that the legislative branch annuals those decisions and laws being incompatible with the Constitution. However, that terminological change results in an institutional dilemma that the regulations or laws annulled by the NPC are exactly made or given assent by the NPC.

[63] Yuming Wang, "Reflections on Judicial Review in China (Guanyu woguo weixianshencha zhi de fansi) " *Study and exploration (Xuexi yu tansuo)*, no. 8 (1990): 52-55; Jinguang Hu, "A Preliminary Study on the Method and Treatment of Judicial Review in China (Woguo weixianshencha de fangshi yu chuli chutan) " *Jurists Review (falv xuexi yu yanjiu),* (1987): 13-18; In his "Reflections on Judicial review in China", Wang went even further in stressing that the Party's decision, which normally stays outside of the legal constrain, may also be unconstitutional. For related discussion, see Zhao and Zhang, *The Legislative and Electoral System of P.R. China*. p. 110.

Besides judicial review, the NILDIE also introduced other designs aiming to increase government accountability. Typical examples include (1) to relocate the national statistical bureau and the national audit bureau from being under the leadership of the Central Government to be under the leadership of the NPC, by which the flawed institutional design resulting in 'being both player and referee' situation could be addressed and the NPC could significantly increase its power of fiscal supervision. (2) To make change to the Plenary Session agenda setting by moving the Plenary Session meetings to November, which could increase its authority in examining the central governmental budget of the coming year (this point echoes the related institutional designs made by the OMIE). (3) To address the problem of lacking proper institutions ensuring that deputies' PMBs are not hastily dealt with (see related discussion in chapter eight). An example of that attempt was to vote for ten most popular PMBs in the Plenary Session; for the chosen bills, corresponding governmental departments must provide a feedback approved by deputies.[64]

5. Legitimising

As mentioned previously, the legitimising function was demanded by the power holders. However, their demands were its minimal type, namely the function of legitimising policy. On the contrary, the NILDIE, whose intellectual background was on the liberal democratic basis, had a clear demand for the NPC to provide the regime with the 'legitimising the regime' function.

The NILDIE's bifurcating intellectual background was the origin of that demand. From the nationalist stand, they urged the maintaining of a strong and solid political power. In the 1980s, because of the falling ideology legitimacy, the CPC to some extent faced a legitimacy crisis, which threatened the strength and solidity of that power. Therefore NILDIE needed to legitimise the CPC's political power. Based on their liberal democratic stand, the NILDIE's disillusion with the party's ideological legitimacy meant finding out another source of legitimacy provider instead of ideological legitimacy to address the crisis. The combined effect of two stands led to their focus on increasing Weberian legal-rational legitimacy. Correspondingly, the NILDIE's ideal NPC should be able to provide the regime, or more precisely, the CPC's leadership,

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[64] Cao, "A Journey of a Thousand Miles Begins with One Step - the Third Discussion on Socialist Parliamentary Democracy".

with legitimacy by showing its rational and legal basis without significantly encroaching upon the integrity and solidity of the party's political power.

The NILDIE's most remarkable corresponding institutional designs were those aimed at increasing the NPC's transparency. As discussed in chapter three, increasing transparency can be used to increase accessibility and participation, both of which were the prerequisite for a legislature to provide the regime with legal-rational legitimacy.[65] However, compared with increasing transparency, there were many other choices that would have granted the regime with legal rational legitimacy more directly, that included strengthening deputies' accountability to the voters, or, more remarkably, selecting the NPC deputies by general elections. However, many pieces of evidence show that the NILDIE had very little interest in those other choices because of their concerns with the masses' lack of skill and training of political participation that would result in 'valueless conflicts' of politics.[66] Seen in this light, their preference to increase transparency was not surprising, because it was a strategy having an effect of increasing top-down openness rather than a bottom-up participating. Therefore, an increase in transparency not only could have contributed to the increase of legal-rational legitimacy, but also, for not increasing participation, prevents an erosion of central authority.

In the *WEH*, many articles can be found during 1987-1988 advocating an increase in transparency by telling the power holders that in doing so would provide the regime with greater legitimacy. Articles also told the power holders that compared with legitimising the regime by economic growth, an improved transparency should be a much fundamental strategy in avoiding legitimacy crisis.[67]

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[65] For theoretical and empirical studies of the importance of legislative transparency, see International Human Rights Law Group, *In the Public Eye: Parliamentary Transparency in Europe and North America,* (Washington, D.C.: International Human Rights Law Group, 1995). Esp. introduction chapter.

[66] Yunzheng Guo, "No Reform, No Socialism with Chinese Character (meiyou gaige jiu meiyou zhongguo tese de shehuizhuyi) " *RMRB,* (05-06-1987).

[67] See Wang Ren, "Establishing Public Attendance System Is the Breakthrough of Political Reform (Jianli rendahui pangtingzhi shi zhengzhitizhigaige de yige tupokou) " *Journal of socialist theory guide (Lilun daokan),* (1988): 16; "An opinion poll illustrates reform severely lacks propaganda" Newsletter in the *WEH* (18-05-1987); "Public attendance in the People's Congress warmly debated (renda pangtingzhi chengle zhubu shengwen de huati)" Newsletter in the *WEH* (25-12-1988); Wang, "Pressing Issues of Perfecting People's Congress System ". A newsletter article highlighted how the masses restored their confidence in the regime after watching the live broadcasting of a legislative debate, see Cao, "CCTV (China Central Television) living broadcasting seventeenth NPCSC debate on the Bankruptcy Law Lead to a Burst of Reflections, (zhongyangdianshitai zhuanbo renda changweihui di shiqi ci huiyi taolun qiye pochanfa yinqi de juda fanxiang)" the *WEH* (16-03-1987).

NILDIE's many institutional designs echoed their demands for increasing NPC transparency. Meanwhile, as increasing accountability and participation were not their primary concern, these two aspects largely not benefited from the NILDIE's related designs. For example, an article in the *WEH* advocated the establishment of a publicly distributed 'NPC daily', in order to educate masses details about legislative debates and other matters. The article also advocated a 'NPC hotline', by which the masses could directly contact with their deputies in Beijing.[68] The NILDIE's related designs also highlighted the masses observing the congress meetings. It is worth noticing that NPC staff members had the similar attempts in the 1980s. However, their attempts focused on providing more openness to journalists rather than the masses. To the contrary, the NILDIE aimed to increase the NPC transparency by the institutional designs not only increasing the openness of the conference to the journalists,[69] but also (1) guarding the masses' right to freely enter the conference hall observing debates; and (2) establishing a routine live broadcasting of NPC legislative debates, which provides a cost-efficient and widely-covering way of increasing transparency toward the grassroots masses.[70] It would be conceivable that, when all of those designs were fulfilled, the NPC would have been an institution with a largely similar openness to the British Parliament that would include a Hansard publishing debate recordings, conferences welcoming public observation, a Parliament Channel live broadcasting debates. All of these would have inexhaustibly provided the regime with legitimacy.

III. Radical Liberal Democratic Intellectual Elite

The radical liberal democratic intellectual elite (RLDIE) were another type of liberal democratic based reform influencers. Their radical nature in advocating the reforms on a liberal democratic basis gave this group of people a 'dissident' label, which made the collection of related primary sources a very difficult task. Moreover, their concern with various aspects of reform made it a very difficult task to reveal their specific attitudes

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[68] Cao, "A Journey of a Thousand Miles Begins with One Step - the Third Discussion on Socialist Parliamentary Democracy".

[69] In the 1980s the authority attempted to allow more freedom for journalists to interview the NPC sessions; however, it did not abolish the institutional settings empowering the NPC to reject giving accessibility to those "unfriendly and uncooperative" media and journalists. Also, the allowance for interviewing was selectively given to certain media.

[70] "An expression of the citizen's demand for thoroughly examining the competence of deputies (gongmin yaoqiu quanmian liaojie daibiao daiyi nengli de biaoxian)" Newsletter in *WEH* (29-02-1988).

and activities in the NPC reform. For the above two reasons, this part frames the argument by focusing on the RLDIE's several characteristics and its linkages to the NPC reforms.

1. General Outline

In his book, Su provides a perhaps the most exquisite general outline of the RLDIE that:

> *With the opening up of the spaces for new ideologies, new public sphere emerged, which gradually formed into inchoate civil society and new political participants. To be specific, certain party and Governmental owned organisations went to the brink of its control (e.g. the CASS' institute of political science). Also in this type were those "nominal governmental owned society and research groups" who were de facto independent. Those research societies or mass media that were completely independent from governmental control had also appeared. The emergence of those societies, institutes, media, or organisations resulted in the development of non-official intellectuals, which became a crucial new political participant. They cherished independent thinking, disdaining for attaching themselves to the CPC or being an instrument for party propaganda. Therefore they were called by the party as dissident; however their influence in the 1980s was still rising.* [71]

The above citation shows that the RLDIE and NILDIE, until the incident in 1989, had largely similar social backgrounds such as profession, education, and occupation. The RLDIE's particularity came from being less impacted by nationalism and its ensuing pragmatism. According to the pioneering research of China's intellectual elite, almost all members of this group could be identified as 'the fifth generation intellectuals'.[72] This group had similarities such as revulsion at official ideological control, academic career being interrupted during the CR, and identifying with a series of liberal

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[71] Shaozhi Su, *Study on Mainland China Political Reform (Zhongguo da lu zheng zhi ti zhi gai ge yan jiu),* (Taipei: Chinese Culture University Press, 2001). pp. 163-64. Similar descriptions can be also found in Gramsci's discussion on "organic intellectuals", in Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci,* (London: Lawrence and Wishart, 1971). pp. 6-14

[72] Zehou Li and Vera Schwarcz, "Six Generations of Modern Chinese Intellectuals". *Chinese Studies in History,* 17, no. 2 (1983-1984): 42-56.

democratic ideas.[73] Correspondingly, the RLDIE had less focus on the nationalist value of national greatness (which was the primary difference to the NILDIE). In the intellectual spectrum, they belonged to the interval C_1-A_1. Those particularities can be seen from the below profiles of the typical RLDIE (table 14).

Table 14: *Basic profiles of the typical RLDIE*

Name	Expertise	Degree/ time of obtain	Primary Occupation
Bao Zunxin	Traditional Chinese Literature	Bachelor/1964	Fellow, CASS Institute of History; Chief editor of the enlightenment translation book series "Going to Future"
Fang Lizhi	Astrophysics	Bachelor/1956	Vice Chancellor of University of Science and Technology of China
Liu Xiaobo	Chinese Literature	M.A./1984	Lecturer of Chinese literature in Beijing Normal University
Wang Juntao	Technology Physics	Bachelor/1982	Vice chief editor, *Economic Weekly* [74]
Yan Jiaqi	Applied Mathematics and Theoretical Physics	Bachelor/1964	Head of the CASS Institute of Political Science
	Philosophy and Social Science	M.A.	
Yang Xiaokai	Economy	PhD/1988	

Note: the selection of people in the list is based on the following criteria: social elite with a wide reputation and influence;[75] intellectuals having a higher education background; taking a radical "criticising power" (and was even more radical in 1989) strategy in advocating liberal democracy ideas in the 1980s reform, which resulted in most of them being jailed or exiled after 1989.

Source: Wikipedia; also referred to Richard Baum, *Burying Mao: Chinese Politics in the Age of Deng Xiaoping*. Princeton: Princeton University Press, 1994.

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[73] For the intellectual transition of the pro-democratic elite, see Merle Goldman, *Sowing the Seeds of Democracy in China: Political Reform in the Deng Xiaoping Era,* (Cambridge, Mass.: Harvard University Press, 1994). pp. 10-12.

[74] *Economic Weekly* was another liberal democratic elite's publication in Beijing having equal reputation to the *WEH* in Shanghai, both of which were forced to shut down in 1989.

[75] To cite Gramsci's word, "all men are intellectuals, but not all men have in society the function of intellectuals". Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*. p. 9.

It is notable that there were many irreconcilable ideas between orthodox Marxism and Liberal democratic ideas.[76] The RLDIE's resolute adherence to the liberal democratic intellectual ideas resulted in their significantly higher opportunity to outstrip the authority's tolerance. Thanks to the CPC's attempts at the prevention of the re-appearance of the CR lawless turmoil by stressing the importance of legal regulations, the RLDIE's advocates in the 1980s were not completely dampened (because of the basic legal protection of free speech) until the incident in 1989 when the tension finally escalated.[77] More importantly, because of the similarities with the NILDIE in social background (university lecturer or fellow in research institutes), in many cases the RLDIE could have an equal opportunity with the NILDIE to use public media. For example, articles written by member of RLDIE can also be found in those semi-official or independent mass media that were largely owned by the NILDIE, such as the *WEH*.

It is inevitable that their challenges to the authority's bottom line resulted in many troubles. For example, Fang Lizhi, a preeminent astrophysicist and also the chancellor of a China's top ranked University, had his post and party membership removed in 1987 for his open demand for radical reforms such as multi-party system, criticising Marxist ideology, and showing sympathy to student demonstration calling for liberty and democracy.[78] Before exiling in the U.S., Yan was the head of the CASS' institute of political science. These two examples exemplified the RLDIE's role played in the reform that was slightly different from the NILDIE. The RLDIE's radical stand largely eliminated the possibility of cooperating with the authority. Moreover, their role in the reform was more likely to be regarded as a mentor or a spiritual leader by the educated youth (particularly the university students) and intellectuals who were suffering ideological disillusionment and seeking a new discourse.[79]

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[76] For the 'irreconcilable' nature of the conflict, see R. Randle Edwards et al., *Human Rights in Contemporary China*, (New York: Columbia University Press, 1986). p.23; Andrew G. Walder, *Communist Neo-Traditionalism: Work and Authority in Chinese Industry*, (Berkeley: University of California Press, 1986). p.7.

[77] It was also due to the reason that the RLDIE, even taking the most radical manner, aimed not to overthrow the Party leadership. See Li and Schwarcz, "Six Generations of Modern Chinese Intellectuals".

[78] Ka-Ho Mok, *Intellectuals and the State in Post-Mao China*, (New York: St. Martins's Press, 1998). p.99.

[79] Hsi-sheng Chi, *Politics of Disillusionment : The Chinese Communist Party under Deng Xiaoping, 1978-1989*, (Armonk, N.Y.: M.E. Sharpe, 1991). pp. 166-67; Mok, *Intellectuals and the State in Post-Mao China*. pp.16-18.

2. Great thinker, passive doer

A limited number of primary data and pioneering research (most of which were conducted by Western scholars) showed that, compared with other two groups of intellectual elite, the RLDIE in the 1980s had the most clear understanding of the Western liberal democratic ideas. They also had the strongest awareness of both the basic human rights (e.g., free speech), and political rights (e.g., voting). Before his post of the University chancellor being removed, Fang made to his students several open speeches having a radical stand; for example, he once warned the students not to be satisfied with the democracy bestowed by the power holders, for those who bestow it can also take it back at any time.[80] Fang was also the most typical and radical activist fighting against the official propaganda marking Western legislative institutional settings as a legislative trick.[81]

According to the data this research observed, the RLDIE's highest possible profundity originating from the liberal democratic ideas were (1) their dissatisfaction at a regime in which political power belongs not to the public but was monopolised by few power holders; and (2) a comprehensive understanding of the history of foreign political development, as well as its resulting various types of Western political system. The salient example was Yang.[82] To be different from all of the abovementioned influencers who simply equated the foreign institutions to American-type division of three powers, Yang pointed out the difference of political systems between the U.S. and Britain. He further believed that the British road should be more suitable for China as both two countries have, or had, strong despotism tradition.[83]

However, so far data in this research is concerned, Fang and Yang, as well as most of the RLDIE, had little interest in developing their liberal democratic ideas into clear attitudes toward how political reform, including the NPC reform, should be carried out. This can be contextualised to be their lack of clear demands for certain NPC functions.

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[80] Fang's open evening address to students, 4th Dec. 1986. see George Black and Robin Munro, *Black Hands of Beijing : Lives of Defiance in China's Democracy Movement,* (New York: John Wiley, 1993). p. 105.

[81] In 1986 Fang made an address on a forum for political reform appreciating a genuine representative and deputy accountability in the U.S. Lizhi Fang and James H. Williams, *Bringing Down the Great Wall : Writings on Science, Culture, and Democracy in China,* (New York: Knopf, 1991).

[82] Yang was jailed for ten years during the CR and then obtained his PhD degree in economy at the Princeton University in 1988.

[83] Shaomin Li, *Mainland China Intellectuals on Politics, Society, and Economy (Dalu zhishi fenzi lun zhengzhi, shehui, jingji),* (Taipei: Guiguan Book 1988). pp. 3-30.

Such passivity was further worsened by the fact that the number of RLDIE reformer was quite small.[84]

Yan, one of the very few RLDIE who had a formal tertiary education in social science, was also one of the few RLDIE having clear functional demands for the NPC reforms based on liberal democratic intellectual ideas. Regarding the representative function, Yan's criticism focused on deputies' lack of accountability. The author pointed out that accountability was the key element of representative democracy. However, it was largely ignored by other reform influencers. Yan believed that deputies' lack of sufficient training and education were not the crux of the matter. The crux of the matter, he claimed, was a lack of clear accountability, whereby those who lost the confidence of voters can still have seats in the NPC. Correspondingly, his prescription was to hold direct and general elections.[85] However, his claim for the lack of accountability and the demand for general elections clearly outstripped the party's scope.

Yan went further in criticising the consciousness that the politics, particularly the decision-making process, should not be fully opened to public, and a vanguard leader was needed as guidance. Based on this, he became one of the earliest intellectual elite stressing the principle of dividing powers and restricting power with another power, instead of stressing only the American three-division institutional designs.[86] More importantly, he was probably the only RLDIE person who claimed that the NPC can have a genuine decision making function only if new institutions were introduced to democratise the decision-making process.[87] This claim was a huge progress compared with that of other reform influencers that only focused on making the process more 'scientific (e.g. the participation of legal experts)'.

However, it is undeniable that even Yan's progressive institutional designs were largely in their embryo as they were guiding principles rather than feasible 'instruction manuals'. In fact, the RLDIE's passivity in designing new institutions was perhaps the

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[84] In fact, in the 1980s there were many liberal democratic intellectual elite having a considerable social impact; however, deliberatively avoid participating in political reform while confining themselves in the 'tower of ivory' and focusing only on Arts and Humanity research, they cannot be regarded as RLDIE (most of them were recognised today as philosophers or Poets). Therefore, the number of RLDIE who contributed to the reform was small. See also the discussion in chapter six.

[85] "Yan said the hope of China depends on democracy and legality," Newsletter in the *WEH* (03-04-1989).

[86] Goldman, *Sowing the Seeds of Democracy in China: Political Reform in the Deng Xiaoping Era*. p.173.

[87] Ibid. p.175. The author's survey of the articles (including journal and newspaper articles, as well as electronic sources that can be accessed through internet) of the typical RLDIEs listed in table 14 did not find other cases.

most salient characteristic of this group of influencers. The following two sections attempts at illustrating the reasons for the passivity from the intellectual perspective.

3. Reasons for the passivity (1): intellectual pluralism

In conceptualising the RLDIE's various demands, pioneering research focused on the rise of pluralism as a counterbalance of the orthodox Marxism's advocacy of centralised power, bottom-up subordination, vanguard leadership, and most importantly, a monotonous society (means all social life is politicalised).[88] However, the reason for the passivity cannot be revealed unless pluralism as a philosophy was specifically divided into several subtypes. This research claims that the RLDIE's intellectual foundation in the 1980s was a consciousness that could be called intellectual pluralism but not political pluralism, which should be the crux in understanding the passivity.

The use of 'intellectual pluralism' refers to a consciousness that appreciates the value of the existence of many intellectual ideas besides the official one. Furthermore, these ideas should be free from the censorships of the authority.[89] Meanwhile, political pluralism, based on the existing definition, highlights the existence of many non-governmental groups in influencing a political process and the democratic political institutional settings ensuring the expression and effecting of different political ideas.[90] It is arguable that focusing on political pluralism, that included a greater mass participation in the decision making, social contract concept, deputy accountability, and a pluralised and competitive political power, are the prerequisites for a reform influencer to develop advocacy for new NPC institutional designs.

A survey of the primary and secondary sources regarding the RLDIE's pluralist demand confirms that intellectual pluralism was their primary concern in the 1980s. The most

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[88] Harry Harding, *China's Second Revolution: Reform after Mao,* (Washington, D.C.: Brookings Institution, 1987). p. 78-79; Dowdle, "The Constitutional Development and Operations of the National People's Congress".

[89] This research can hardly find an established term to express such concept. 'Intellectual pluralism' is perhaps the most approaching term.

[90] However, it is worth stressing that the essences of political pluralism include not only those mentioned elements, but also other elements such as the right to express freely, a pluralised and uncensored access to information, which are similar to the essence of intellectual pluralism. Therefore political pluralism can be seen as a higher stage than intellectual pluralism. See, generally, William A. Galston, *The Practice of Liberal Pluralism,* (Cambridge, UK; New York: Cambridge University Press, 2005). Chapter 2; William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice,* (Cambridge, UK; New York: Cambridge University Press, 2002). pp. 55-56; Robert Alan Dahl, *Polyarchy: Participation and Opposition,* (New Haven: Yale University Press, 1971).

direct evidence was a widely noticed fact that the radical reformers' demand was largely for a greater freedom in the expression of non-official intellectual ideas. Harding, for example, noticed that the radical reformers favoured the changes that *"would allow writers, artists, and intellectuals greater freedom to explore hitherto forbidden subjects and to experiment with new styles of expression"*;[91] Mok revealed that demanding 'cultural democracy', meaning *"to free themselves from the autocratic political system and to liberate the realm of literature and the arts"*, was at least part of the real concern of the *"crusaders for democracy"*.[92]

The Chinese history of modernisation after 1840 revealed that once China was shocked by certain menaces that could lead to the so called 'national extinction', radical wing intellectuals always made a similar response in focusing on intellectual reforms rather than institutional reforms. This history had an origin in the consciousness seeing intellectual matters as the root of the institutions (see chapter four). As a period directly following the CR turmoil that pushed China to the brink of total crisis, the 1980s was not an exception.[93]

Seeing intellectual matters as a priority (see chapter six) highlights a fact that many influential intellectual elite with liberal democratic ideas saw institutional developments as non-important. In fact, the subdivision of the RLDIE's pluralism consciousness provides this group with a more exact portrait: their intellectual ideas were also influenced by nationalism. However, compared with the NILDIE, the impact of national crisis happened in another form, which was to seek salvation from new ideas (instead of new institutions). Its direct expression was their demand for intellectual pluralism, instead of a centralised political power. There are also pioneering researchers highlighting that the intellectual elite had an elitist consciousness, which resulted in their reluctant to advocate the institutional designs having the nature of political pluralism, including the general election that gives every person the right to vote.[94] This

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[91] Harding, *China's Second Revolution: Reform after Mao*. p.78.

[92] Mok, *Intellectuals and the State in Post-Mao China*. p. 22. There have been also articles noticed this matter, such as the studies on Chinese legal development. See Baum, "Modernization and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality".

[93] Perhaps its most salient expression was Liu's claim. In an interview by a Journal in Hong Kong in 1988, he was asked about the prerequisite of mainland China's social-political change. Liu replied that it can be achieved only if China was colonised for at least three hundred years, which is because a hundred year British colonisation in Hong Kong has imbued it with certain Western intellectual ideals (e.g. legal concept, liberty, human rights), by which Hong Kong enjoyed an advanced political system than mainland China. See Xiaobo Liu, "My Ninteen Years Friendship with *Open Magazine* (Wo yu kaifang jieyuan shijiu nian) " *Open Magazine (Kaifang zazhi)*, no. 1 (2007).

[94] Jonathan Unger, "Introduction", in Jonathan Unger and Geremie Barmé, *The Pro-Democracy*

finding explains the reason as to why the case of Yang who advocated the establishment of general elections was very rarely found.

4. Reasons for the passivity (2): lack of knowledge of foreign political systems

Previous chapters revealed that the intellectual importations in the 1980s were limited and confined by the authority, thus the new ideas were too weak to support the designing of new institutions (resulting in many designs lacking practicability was its another expression). The findings regarding the intellectual importation also explains the RLDIE's passivity in institutional design. As table 14 (page 229) illustrates, although the majority of the RLDIE did not study law and politics, their personal experiences, comparatively advantaged status in the stratified society, and their personal or academic linkage to foreign counties provided them with both willingness and possibility to get in touch with foreign intellectual ideals. This research argues that lacking a professional knowledge in legal politics, the RLDIE's knowledge was not enough to support the designing of new institutions, although their understanding of the foreign liberal democratic intellectual ideas made them a firm reform influencer advocating the borrowing of foreign institutional designs.[95] Fang's dissatisfaction at Chinese legislature's lack of deputy accountability saliently exemplifies this claim. Fang began to realise that the representativeness in the Western legislatures was not a 'trick' when he was a visiting scholar in New Jersey, in which he received some material sent to every house from a congressman of this constituency writing to report what he did in the congress. Having this experience, he urged the authority to make the legislators more accountable.[96] However, his status as a visiting scholar on astrophysics in America could not provide him with a greater and specific knowledge on how the institutions should be designed to increase the accountability nor could he be enlightened about how the American system can be transplanted to China. Such an insufficiency of knowledge was particularly salient in this group. Their greater opportunity to either get in touch with or directly experience the foreign political systems resulted in their greater concern with learning from those systems, which simultaneously made the insufficiency more remarkable.

Protests in China: Reports from the Provinces, (Armonk, N.Y.: M.E. Sharpe, 1991). pp. 4-5.
[95] Evident shows that many RLDIE's expertise on natural science played a role of catalyst in their disillusionment of Marxist ideologies. See, for example, Fang and Williams, _Bringing Down the Great Wall: Writings on Science, Culture, and Democracy in China_. Introduction chapter.
[96] Lizhi Fang, "On Political Reform", in _I.bid._ p. 145.

It is worth bearing in mind that a lack of knowledge of foreign political system intensified the conflict between the RLDIE's advocates for institutional developments and the CPC's bottom line, as they lacked knowledge to prevent their claims from challenging it. The most significant irreconcilable conflicts of this kind happened between the RLDIE's demand for checks and balances political system and the NPC's institutional principle based on the Marxist legislative doctrines, which declared its superior position among other political institutions. Documentary evidence shows that the RLDIE's claims for change largely overlooked, or failed to resolve, this conflict. For example, an article in the *WEH* suggested twenty-three new institutional designs for political reforms. One of which compelled the "*real establishment of the NPC's position of the highest organ of state power*". However it simultaneously called for "*an effective government on the basis of the checks and balances principle*". The author did not notice that his two claims were in conflict.[97] The abovementioned Yan's prototype advocacy for a checks and balances system was another example of this kind.

There were also RLDIE's demands that were not in conflict with, and even supported by, the Marxist legislative doctrines. However, as it went too far from the existing institutional settings, the making of corresponding institutional designs became a gigantic task that required institutional designers not only to be a 'tinker' but also a 'chief engineer' in the designing of the political system. The demand for national level legislative general elections was a typical example. The electoral system in the 1980s was fixed by the Electoral Law in 1979 that permitted a general election for only the last two levels of the PCs. Based on which, all of the forthcoming institutional designs, including those having been legalised (e.g. the 1982 People's Congress Organic Law), were made in accordance with this principle. Therefore, the legislative institutional design after the end of the CR, particularly after 1979, remained the indirect elections unchanged, although the Marxist legislative doctrines strongly recommended the general elections in the national legislatures (as previously mentioned, Engels even saw it as one of the fundamental characteristic of the socialist state). A huge amount of work has to be done before the demanded NPC general elections can be held: at least several basic laws should be amended, let alone the adjustment of many fundamental institutional designs of both intra-agency and inter-agency. Arguably, without having

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[97] "A Preliminary Design on the Reforms of the Following Decade, (Weilai shinian zhongguo gaige shexiang) " *WEH,* (10-04-1989).

strong supports from the authority, any single intellectual elite could not push forward such gigantic institutional changes.

Conclusion

Considering the democratisation of the Eastern Europe former Soviet Countries in the late 1980s in which vivid, creative, and groundbreaking intellectual elite played a crucial role, it is regrettable that the Chinese intellectual elite's engagement in political reform did not provide the NPC institutional developments with considerable support. Its reason, according to the findings of this chapter, can be concluded by three rifts that tore up this group into conflictive pieces.[98]

The first rift was the position of the CPC. The people of this group saw the party and the state as two distinctive institutions whose interaction was zero-sum. Therefore the CPC-legislature relationship, which should be a question of 'how', became a question of 'which', VIZ. one part of this group claimed the CPC's leading position in the legislature, while another part stressed the NPC's role as the supreme organ of state power.[99] Only a few of them had ever probed the issue of how those two institutions can be given a proper relationship by new designs. The second rift was between the Marxist tenets and the foreign intellectual thought. This chapter illustrated a considerable tension in the people of this group. On one side were the OMIE advocating reforms on the Marxist basis; on the other side were the NILDIE and RLDIE, the former tried to avoid such tension while the latter advocated the liberal democratic ideas and an overall discourse change. Thirdly was the separation between culture and institution. The RLDIE in the 1980s inherited the 'convention' of Chinese intellectuals saw culture as more fundamental than the institution. Such consciousness not only distracted the concern of these two groups of people but also led to their denial of discussing institutional matters.

The intellectual elite in the late period of the 1980s made several attempts to bridge these rifts. These attempts include the large-scale introduction of Western political

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[98] The greater intellectual span of this group made such rifts inevitable. In fact, intellectual elite is the only group in this thesis that covers not only three major stages but also two intellectual camps (B-C in the Marxist camp, B1-C1-A1 in the liberal democratic camp).
[99] An interviewee show his feeling of such relation in the 1980s by a metaphor: Chinese political system is an artwork of the CPC, as drawing has not finished, the "artist" cannot say goodbye; it is the most vivid example showing their dichotomy attitude this research has ever found. Interview, 27-11-2011.

systems and engaging in comparative studies between different systems. Taking the *WEH* as an example, in 1989 the reforms of the Eastern European Soviet countries attracted a considerable concern from the newspaper editors. An article by Wang even clearly pointed out that the crux of the political reforms in these countries was the rise of political pluralism.[100] However, these works appeared too late and lagged far behind the step of reform. Therefore, it failed in either guiding the reform or preventing it from growing into radical.

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[100] Yizhou Wang, "Pluralism Politics: Hallmark of a Successful Reform (Duoyuan de zhengzhi: gaige chenggong de biaozhi) " *The World Economic Herald,* (09-01-1989)

Chapter 10. Grassroots Reformers

Introduction

The pro-democracy movements in 1980s China are constantly one of the most intensively debated issues of Chinese politics. This area of research normally aims both to reveal the roles the grassroots reformers played and illustrate the contributions and effects of those movements. Correspondingly, they have little interest in revealing the linkage between the movements and the development of certain institutions, including the NPC. Meanwhile, the primary concern of the research of the Chinese legislative system, particularly its developments during the 1980s, was the influencers inside the political system – the legislators and the power holders, and consequently, pioneering research contributed little to the construction of such linkage. Looked at in this light, the purpose of this chapter is to reveal the role played by the grassroots reformers in the 1980s NPC reform. More importantly, it shows how their intellectual backgrounds had affected the fulfilling of such role.

As chapter six partially noticed, in the 1980s there were two major groups of influencers who, while equally having no adequate political power to influence the reform, had a greater political awareness than the masses. First, was the wall-posters who, during 1978-1981, dominated the wall-poster movement that heralded the pro-democracy movements of the 1980s. Second, was college students who can be indisputably entitled as the main force of a series of pro-democracy movements in the 1980s. This chapter frames the argument by focusing on those two groups of people by the study of the typical pro-democracy movements, namely, the wall-poster movements, the student demonstrations for LPC elections, and the student demonstrations since 1986.

I. Urban wall-posters

The wall-poster movement was the first pro-democracy movement in the post-Mao period.[1] Researchers of this group are benefited from the assistance of the seventeen

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[1] For specific chronological sequence of the Wall-poster movement, see Mu I, *Unofficial Documents of the Democracy Movement in Communist China, 1978-1981: A Checklist of Chinese Materials in*

volume compilation collecting all major unofficial publications and many research articles. Meanwhile, a large quantity of primary data is also a challenge: the kaleidoscopic wall-poster articles presented a wide span of attitudes and ideas; moreover, in contrast to the study of the intellectual elite, this research can hardly mark any of the posters to be 'typical' or 'having a greater influence'. Therefore, the method of illustrating the wall-posters' intellectual ideas by listing individual cases is avoided. Instead of that, this part attempts to get to the equilibrium between summing up general ideas, demands, and designs; as well as presenting certain typical cases where firm evidence illustrates their greater influence.

1. Social and intellectual background

As sociologists have shown, the appearance of unofficial reform participants depends on a prerequisite, namely the opening up of an adequate public sphere.[2] Compared with the reform elite who enjoyed a significantly larger public sphere in the 1980s (e.g. own media and semi-official research institutes), the grass roots reformers were clearly in a disadvantaged status as they controlled almost no official, or semi-official, resources to influence political reform. Ironically, the first public sphere opened to the grass roots reformers was in the form of wall-posters, which was the creation of the Maoist style 'gross democracy' that allowed the commons to express their view by posting large character wall-posters (wall-posters written in very large papers) in public space. The end of Maoist period witnessed the changes of the function of wall-posters. In the CR the Maoist power holders encouraged the wall-posters as it reflected the advancement of proletarian democracy and, as a weapon, helped crush 'bourgeois enemies'. After the fall of Maoist Marxism, wall-posters gradually turned out to be a strategy of the commons to express their anger toward social turmoil, personal grievances, and a lack of democracy.

Although wall-posters were ubiquitous in China during 1978-1981, the most widely influential initiative was seen in Beijing, in which a wall not far from Tiananmen Square, the heart of Chinese politics, gathered thousands of wall-posters. Its further development and systematisation were the appearance of unofficial publications: more

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the Hoover Institution on War, Revolution and Peace, (Stanford, Calif.: East Asian Collection, Hoover Institution, 1986). pp. 11-36.
[2] Su, Study on Mainland China Political Reform. pp. 163-64.

than twenty publications appeared in this period in the form of periodic journals that were either sold near the wall or posted on the wall. Following Beijing, other cities also saw the emergence of unofficial publications, and many of which was equally influential.

Regarding the wall-posters' social background, a default view among scholars is that the wall-poster movements were conducted by the citizens in major cities, and particularly by the former sent-down youngsters who had returned back to the city. Correspondingly, the participation of intellectual elite was seldom seen.[3] Regarding the social backgrounds of the returned sent-down youngsters, pioneering research normally highlight three characteristics. The first was that their life has been greatly affected (or even damaged) by the CR turmoil. In particular was their experience of the Maoist 'democratic dictatorship' that, in the period of the CR, degenerated into a "total dictatorship". It became a club waiving by the bureaucrats of each level crushing any individual who attempted to challenge their authority.[4] The second characteristic was their personal grievances. The urban youths' forced leaving from cities for rural areas not only profoundly disturbed their life but also resulted in many grievances.[5] Thirdly, they had difficulties re-embracing the urban life. The most significant expression was the surging unemployment rate after a significant amount of young people returned to the cities. Widely noted by social scientists, unemployment is responsible for social instability as it magnifies grievances and dissatisfactions at authority. It is also noticeable that even for those posters who were not sent to the rural area, the above three characteristics were, if not that striking, also significant, since the CR turmoil and the consequent side effects were ubiquitous.

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[3] David S. G. Goodman, *Beijing Street Voices: The Poetry and Politics of China's Democracy Movement,* (London; Boston: M. Boyars, 1981). Introduction, pp. 15, 127; Mok, *Intellectuals and the State in Post-Mao China.* p. 20; Kjeld Erik Brodsgaard," The Democracy Movement in China, 1978-1979: Opposition Movements, Wall Poster Campaigns, and Underground Journals " *Asian Survey,* 21, no. 7 (1981): 747-74.

[4] Fuxin Kang, "Democracy Journals and the 'Wake-up' Generation (Dalu de 'minzhu kanwu' yu 'xingwu yidai') " *Collection of Underground Publications circulated on Chinese Mainland,* 5 (1981): 299-307.

[5] The most commonly seen grievance was the unfair compensations for the unfair treatments happened during and after they were sent down. See generally, Xiaomeng Liu, *An Oral History of the Sent-Down Youngsters (Zhongguo zhi qing kou shu shi),* (Beijing: Social science press of China, 2004); Yarong Jiang and David Ashley, *Mao's Children in the New China: Voices from the Red Guard Generation,* (London; New York: Routledge, 2000). For primary evidence, see Unofficial Journal "Zhejiang Spring (Zhejiang zhi chun)". Its certain volumes were occupied by the articles protesting for personal grievance. See Case Team of the Collection of the Mainland Underground Publications, *A Collection of Underground Publications Circulated on Chinese Mainland (Dalu dixia kanwu huibian),* (Taiwan: Institute for the study of Chinese Communist Problems, 1980). (abbr. *CUP*) book. 15.

The intellectual ideas of the posters echoed the abovementioned social characteristics. The wall-posters were the earliest grassroots masses advocating the return of orthodox Marxism,[6] which was due to their profound disillusionment with Maoist-Marxism, and particularly its theories over-emphasising class struggle and class dictatorship.[7] They were also a group of influencers that perhaps most notably lacked opportunities to systematically get in touch with liberal democratic intellectual ideas, and thereby their distrust and dissatisfaction had not resulted in the change of discourse. To use the Li-Yi-Zhe Poster as an example, it claimed that 'people's democracy' was distorted to be a factional democracy (meant 'lawless' factional struggle), by which a class-based democracy was perverted, thereby facilitated certain factions to impose a fascist dictatorship. However, the analysis did not go any further to ask for a democracy on an equal and universal basis. Instead, it attempted to eliminate factional struggles and advocated a return of the orthodox class based democracy. The preferred legal system in the Li-Yi-Zhe Poster was still class-based, which granted legitimacy to class dictatorship (although the dictatorship was claimed to be regulated by law). In another example, a sent-down youngster wrote that *"it has been testified to be a lie in the CR that democracy, the mass line, and political power belongs to the masses; politicians now confess that all of our policies are decided by bureaucrats, every aspects of our life are determined by them"*.[8] However, as a 'prescription', the author claimed that those drawbacks can be addressed only if *"the party gives the people a new consciousness and allowed the people to engage in social administration."*[9]

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[6] "Li-Yi-Zhe" poster appeared in 1974, which is even earlier than Mao's death.

[7] Articles showing wall-posters' acknowledgement to the CPC's ideological legitimacy was not observable in the *CUP*. To be contrary, many articles questioned the CPC's ideological legitimacy and negative legitimacy. For example, Yi Mu, "Look! Where are the Chinese people's own thought? (Kan! he chu shi zhongguoren ziji de siwei?)", *Exploring*, vol. 2, cites in *CUP, book* 2, p.12; Lan Yao, "Under the five-star flag (Wuxing qi xia)", *Life (Shenghuo)*, vol.1, cites in *CUP, book*2, pp. 303-08; Anonymous*, "recall sufferings in the old society and contrast them with the happiness in the new (Yi ku si tian)", The Masses' reference news (Qunzhong cankao xiaoxi), vol.5, cites in *CUP, book*3, p.211; Lin Lu, "Foundation of the confidence crisis (Xinren weiji de genyuan)", *Exploring*, vol.5, cites in *CUP, book*4, pp. 61-62; Erjin Chen, "On proletariant democratic revolution (Lun wuchan jieji min zhu geming)", *April Fifth Forum (Si wu luntan)*,vol. 10, cites in *CUP, book 1*, p.109; Jingsheng Wei, "The fifth modernisation (Di wu ge xian dai hua)", *Exploring,* vol.1, cites in *CUP, book 1*, p.2.

> *Note: Besides those articles bearing no author information, for safety reasons, many pseudonyms were used as well; those articles were also labelled with 'anonymous' in this research.

[8] Hongbiao Yin, *Missing Person's Footprints (Shizongzhe de Zuji),* (Hong Kong: Chinese University of Hong Kong Press, 2009). p.323. Andrew J. Nathan, *Chinese Democracy,* (New York: Knopf : Distributed by Random House, 1985).

[9] I.bid.

To be contrary, a spontaneous growth of liberal democratic ideas and its effects in shaping the intellectual background of the wall-posters also had considerable effects. A default view realises that the wall-posters' understanding of democracy largely came from the advocacy of the orthodox Marxist power holders; therefore scholars were reluctant to acknowledge such spontaneity. A particularly salient example was to argue that the wall-posters' democratic ideas came from the new official ideology announced in the party's Third Plenum conference. This research argues that the spontaneity is undeniable for two reasons. Firstly, there were examples that the reformers advocated democracy earlier than the power holder's new ideas. A salient example is the abovementioned Li-Yi-Zhe poster in 1974; Wei's poster also appeared earlier than the party's Third Plenum. Secondly, as the following three intellectual particularities illustrate, there were huge differences in the understandings of democracy between the power holders and the wall-posters, which illustrates that orthodox Marxism in official propaganda did not solely constitute the wall-posters' intellectual ideas.

In the wall-poster movement, the highest possible profundity the spontaneous liberal democratic idea could ever reach was Wei's widely influential poster article "the fifth modernisation". In this article that resulted in ten years in jail, Wei, an electrician in Beijing zoo with no higher educational background, pointed out that Deng would have been a new dictator if the political system was not democratised and the masses were still waiting for a bestowed democracy.[10] However except for extremely limited cases like this article, it is widely observed that the spontaneity resulted in an unique liberal democratic intellectual idea, which had the most striking feature of bearing many historical legacies of Chinese conventional political thought, such as seeing democracy as an attitude rather than a principle of institutional design, as well as emphasising the wishes and interests of the majority while ignoring the 'tyranny of majority'.[11] At the same time, the influence of nationalism that has been widely encountered in the studies of other reform influencers was also seen in author's observation of the wall-poster articles.[12]

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[10] Jingsheng Wei, "The Fifth Modernisation (Di wu ge xian dai hua)", *Exploring,* vol.1, cites in *CUP, book 1*, p.2.

[11] Zhong Min, "On the Value of Democracy (Dui minzhu yiyi de yixie kanfa)", *Seeking Truth (Qiu shi bao),* vol.17, cites in *CUP, book* 6, p.89.

[12] Even for those most radical advocates for democracy, such influence is also observable. For example, democracy, in the Wei's article, was to serve the target of the 'four modernisations' that was claimed by the authority to be a 'road-map' for achieving national greatness.

The combination of orthodox Marxism and the spontaneously developed liberal democratic ideas resulted in the wall-posters' unique intellectual background. Because the combination resulted in a kaleidoscopic varieties of specific attitudes or claims, illustrating the wall-posters' general intellectual idea and allocating it in the intellectual spectrum is a challenging work. [13] However, at least three characteristics of their intellectual background can be widely observed and worth highlighting. First, the wall-posters not only stressed the extreme importance of using the legal system to prevent the re-appearance of the rule by an individual tragedy (which was a typical orthodox Marxist acclaim), but also strongly emphasised laws' role as protecting the commons from arbitrary political power; in claiming so this group of people, compared with other groups, went most close to the essence ideas of the rule of law. [14] However, two flaws remained. (1) They did not stress the rule of law as a means of constraining political power but wait for a benevolent power holder, in using laws as an instrument, to protect their basic legal rights; and (2) the importance of practicing the 'rule of law' concepts by new institutional designs was not stressed by the wall-posters; instead, they saw laws as an 'amulet' that would automatically protect them from infringements of political power. In an extreme case, articles of the Constitution stating people's right of free speech were printed out to be the cover page of an unofficial journal to fight against censorship. [15]

Second, the wall-posters had a strong willingness to protect their individual interests and petition for a redress of their grievances. They therefore applied the strategy of seeking social salvation, the most radical strategy in Coser's category, to advocate their demands. In doing so they had a characteristic that differed from other believers in orthodox Marxists whose intellectual background resulted in their greater awareness of group interests (e.g. the interests of the nation) and less willingness to launch petitions.

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[13] Such a "width" was partially mentioned by Chen, whose study measured the political attitude of many articles from unofficial publications by the assistance of a scoring system. His study confirms that the intellectual influence came from both of the Marxist side and liberal democratic side. See Yingwei Chen, *Political Order and Youth Consciousness of the Changing Society in Mainland China (Zhongguo da lu she hui bian qian zhong zheng zhi zhi xu yu qing nian li nian),* (Taipei: You shi wen hua shi ye gong si, 1987). Chapter 3.

[14] For cases of the constitution being used as a 'shield', see People's Voice editor, "An announcement to the people (Gao renmin shu)", *People's voice (Renmin zhi sheng)*, vol.3, cites in *CUP, book*1, p.232; Shui qiu, "Why promulgated law cannot be applied (weishenme lifa er nanyi xing)", *Exploring*, vol.4, cites in *CUP, book*3, pp.10-15. For cases of other basic laws being used, see Exploring editorial, "Announcement (Shengming)", in *Exploring*, vol.5, cites in *CUP, book*4, p.8; Anonymous, "News reports (Xinwen zonghe baodao)", *April Fifth Forum*, cites in CUP vol.15, p.240.
Rozman and Bernstein, *The Modernization of China.* p. 313.

[15] The cover page of *April Fifth Forum*, vol.1, in *CUP*, book.3, after p.44.

Third, the wall-posters had very little concern with protecting or increasing democracy by developing new institutional designs; some of which even believed that institutions were redundant forms that would confine the increase of democracy. Correspondingly, wall-poster articles were used as media that was believed to convey their wishes to the top power holders. Meanwhile, they prayed for some benevolent top power holders to respond to their grievances and wishes. The intellectual background of that particularity is twofold: on the one hand, their preference of using personal contact strategy and pinning their hope on benevolent top power holders had a clear origin in the Chinese historical legacy - As previous chapters illustrated, for decades of time in which political power was monopolised by a small and limited number of power holders it had been a custom for the commons to stay out of the 'high politics', which means they do not seek political participation, but merely 'wait outside' for someone to assist. On the other hand, that idea was also strengthened by the remaining influence of the CR "gross democracy"[16] as well as the Marxist claim of the 'higher stage of democracy', in which the masses can freely express their 'voices' without any institutional or legal constraint.

Wei's influential article "the fifth modernisation" was particularly worth citing, as it perfectly exemplified the wall-posters' distrust on the existing system, a strong antagonistic passion to political power, and a preference for using a non-institutional and self-governance strategy to increase democracy.

- Do not be fooled again by dictators who talk of "stability and unity." Fascist totalitarianism can bring us nothing but disaster. Harbour no more illusions; democracy is our only hope.

- I firmly believe that production will flourish even more when controlled by the people themselves because the workers will be producing for their own benefit. Life will improve because the workers' interests will be the primary goal. Society will be more rational because all power will be exercised by the people as a whole through democratic means.

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[16] Dittmer, *China under Reform*. p. 154. It is worth mentioning again that the wall-poster's ideas about democracy originated from 'gross democracy' that largely differed from representative democracy.

•Every minute portion of democracy of real value was stained with the blood of martyrs and tyrants, and every step forward was met with strong attacks from the reactionary forces.[17]

In a rigid political philosophical context, self-governance is not necessarily a concept against representative democracy; however, the thought of the wall-posters, like Wei, was clearly a Paine style radical democratism that was different from, if not in conflict with, the mainstream understandings of democracy (etc. liberal democracy, consensus democracy, and pluralist democracy) that share a set of values such as protecting individual liberty (from Mill), political power with its sovereignty comes from the commons (from Locke), constitutionalism, and the rule of law (from American Federalists, particularly Madison). All of the above values require the assistance of an established institution.[18] On the contrary, seeing democracy of the masses as a priority over other values, democratism, even in its modest form, was to some extent harmful to the development of representative institutions.[19]

2. Functional demands

(1) Decision-making

The passivity of improving the NPC's decision-making function that has been witnessed only in the study of the RLDIE was also witnessed in the writings of the wall-posters.[20] Documentary evidence further illustrates that the two explanations of the RLDIE's passivity were not valid when applied to the study of the wall-posters: the pluralist consciousness, although observed in rare cases, was not significant enough to be seen as a prevailing consciousness for the wall-posters.

Considering the fact that (1) the wall-posters did not see the decision-making function as an important or urgent topic of reform; and (2) a considerable number of wall-poster articles pointed out that 'conspirators' grasping the decision-making power under the

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[17] *Source:* Wei Jingsheng, "the Fifth Modernisation (Di wuge xiandaihua)", English version is based on *Asia for Educators,* Columbia University http://afe.easia.columbia.edu/ps/cup/wei_jingsheng_fifth_modernization. pdf (Accessed 13-08-2012).

[18] Those values belong to the category of classical liberalism. Although its core value is to reduce political power in a civil society to the minimum level, they are not a set of ideas denying the necessity of the established institutions.

[19] See Jean-Jacques Rousseau, *The Social Contract: Or, Principles of Political Right,* (Ware: Wordsworth Editions Ltd., 1998). pp. 59-60.

[20] See also Min's survey and its findings discussed in the reviewing chapter.

pretext of people's democratic dictatorship was partially responsible for the 'rule by an individual' tragedy,[21] it is safe to conclude that the wall-posters' passivity directly derived from their lukewarm attitude toward making any new institutional designs to strengthen this function of the NPC. In a more precise word, the wall-posters had no interest in *how* the decisions are made – whether the institution is exquisitely designed to guarantee the quality and quantity of the decision making was not their primary concern; instead, they were particularly interested in *who* makes decisions. This particularity led to an effect that the wall-posters' demand for the NPC's decision-making function was replaced by their demand for the representative function. In many articles, the wall-posters advocated open and universal NPC deputy elections, through which the masses select their own representatives in the legislatures.[22] In doing so, they believed, the decision-making function would be strong enough because decisions would be made according to the wishes of the masses. Such a belief had another expression that they believed that 'improperly' selected deputies, rather than lacking properly designed decision-making related institutions, resulted in the making of the decisions that went against the wishes of the masses. In a wall-poster article written to show ordinary people's dissatisfaction with a NPC decision, it angrily asked "*how can those people (who made the decision) be a deputy*", instead of "what institutional design resulted in the making of such decision that goes against the wish of the masses". [23]

Although having a slight difference from its original concept given by Pitkin, the abovementioned consciousness that the NPC decision-making function can be strengthened by improving the deputy electoral system (particularly by increasing competitiveness and preventing seats allocating) had the intellectual basis of the concept of descriptive representation, VIZ. they thought that deputies elected by the masses would speak for the masses. Meanwhile, evidence shows that such an idea was also strengthened by the abovementioned lack of a wish by the wall-posters to use institutional approaches to get involved in the 'high politics'. In this regard, its expression were the wall posters' many demands for a man of righteousness to represent

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[21] Jingsheng Wei, "The fifth modernisation"; Erjin Chen, "On proletariat democratic revolution"; Anonymous, "A preliminary discourse on the people's right of democracy (qian tan renmin de minzhu quanli)", *April Fifth Forum*, vol.7, cites in *CUP*, book5, pp.5-8.

[22] There was an article that clearly applied the principle-agent theory in stressing that only those elected deputies have the authority to make decisions; examples can be seen in Lin Lu, "Foundation of the confidence crisis".

[23] Anonymous, "The historical importance of the Democracy Wall will never be denied! (Xidan minzhuqiang de lishi gongji burong fouding!)", *People's Voice*, vol.12&13, cites in *CUP*, book16, p. 147.

their wish and interest in the decision-making process, rather than the demand for the development of any institution. By a deputy with high moral standard, the wall-posters believed that they could either get involved in the 'high politics' by imbuing their wishes into legislative agenda settings, or prevent the deputies from making any decisions going against the wishes of the masses. Such an idea was never new. As a hotly debated topic, many scholars believe that Confucianism in China had resulted in a theory of original goodness of human nature (Xing shan lun), by which good governance is determined by the wisdom and benevolence of the rulers; on the contrary, Western constitutionalism is based on the belief that absolute power would result in the degeneration of human nature, which generated the claim that power must be checked and balanced.[24]

(2) Representative function

The wall-posters' demand for the NPC's representative function had a remarkable particularity that they saw improving and perfecting the deputy election institutions to be the only channel of strengthening the representative function. According to the function-institution linkages in chapter three, such a simplicity can be seen as their overlooking of several other equally important aspects of the legislatures' representative function, namely, the quality of deputies, private members bills, deputy-voter tie, accountability, and whether deputies played a remonstrative role from a bottom-up direction.

An important fact is that the wall-posters' demand for the reforms of the legislative elections was the only aspect of the legislature's representative function that can find sufficient 'support' from Marxist tenets (and even from the CPC's own propaganda), and it therefore needed no support from liberal democratic intellectual ideas. This fact is easily understandable in considering the wall-posters' requirement for universal suffrage. The wall-posters advocated the universal suffrage not by highlighting its crucial role in any liberal democratic regime. Instead, they illustrated that first, the Marxist concept of the class-based society and class-based politics were absolutely correct, by which depriving the franchise of 'class enemies' was also correct; however, secondly, as the CPC in the post-Mao period claimed that society-wide class struggle had been a matter of non-importance and class enemies had been largely extinguished, it

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[24] Shao-hua Hu, *Explaining Chinese Democratization,* (Westport: Praeger, 2000). p.27.

was therefore reasonable to have NPC deputy elections with the universal suffrage.[25] Another example is an emphasis that the non-manipulated elections would not endanger the party's control over the NPC because the party, as the vanguard of the people that accounts for the majority of the society ('class enemies' was claimed to be very few), would never have its decisions being rejected in the NPC – *"how can a vanguard make a decision that goes against the wish of its minion?"*[26]

For the same reason, the wall-posters' lack of concern with the quality of deputies and PMBs are quite understandable. Lacking liberal democratic ideas, their consciousness of descriptive representation, as well as the impact of the domestic political thought, stressed a politician's righteous personality rather than political skill.[27] Correspondingly, PMBs belong to the category of 'high politics' that surpasses the 'range' of the concerns of the wall-posters whose concern was largely with the election of the deputies and, at the farthest, letting deputies know what the masses want, but did not include any expectations for the quality and quantity of PMBs.

Another fact needing explanation is that the wall-posters' preferred way of expressing their grievance to the NPC was petitions. The petitioners directly stated their grievances in the form of open letters to the NPC that were written in the wall-posters; there was no observable evidence showing they had ever tried to seek legislative involvement by any established paths, nor did they demand for deputies to be remonstrative. The wall-posters' preference for the petition strategy could not be explained by simply stressing the NPC's 'rubber stamp' characteristic: the fact that they chose the NPC to express their grievances contradicts many pieces of previous research taking a well-accepted view that the NPC's institutional weaknesses and functional inabilities resulted in the masses' indifference toward seeking assistance from the NPC. In contrast, taking into consideration the abovementioned wall-posters' characteristic of having a CR 'gross democracy' heritage, their preference for the petition strategy can be seen as this heritage's resulting preference for direct democracy rather than representative democracy. This heritage was also responsible for the wall-posters' preference for

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[25] Anonymous, "From indirect election to direct election (Cong jianjie xuanju zhi guodu dao zhijie xuanju zhi)", *Seeking Truth*, vol.10, cites in *CUP*, book 4, p.126.
[26] Xizhe Wang, "The leadership of the CPC and the people's supervision power (Dang de lingdao he renmin jiandu)", *April Fifth Forum*, vol.15, cites in *CUP*, book 10, pp. 20-31.
[27] A politician being too "skilful" would result in a declination of people's trust, as it was traditionally linked to an abnormal individual ambition or conspiracy; also, the criterion of a "man of noble and righteous personality (Junzi)" includes the requirement of being frank and honest in dealing with public affair.

participating in politics not by any established institutional channels but by destroying them because they saw institutional channels as hindrances of democracy. The participation of the wall-posters was also in the form of direct democracy – delivering their grievances directly to the top.

Moreover, the bifurcation of 'high politics' and 'low politics' might have also strengthened the wall-posters' preference for the 'direct participation' (a participation without taking any institutional channel). For the masses that have been profoundly influenced by the historical legacies stressing a hierarchical order, although orthodox Marxist doctrine stresses the deputies' full accountability to the masses, once deputies are chosen, their activities are known to be a part of 'high politics'. Therefore, whether they are remonstrative is not determined by the masses.[28] Correspondingly, they choose to appeal for a top-down remedy by open letter petition – a more direct strategy that also has a particularly long tradition in Chinese politics.[29]

(3) Supervisory function

As previously mentioned, the wall-posters had a clear consciousness of the laws' function of confining the arbitrary use of political power. This consciousness was not without institutional support; the 1978 Constitution of China (the 1982 Constitution was promulgated after the wall-poster movement) reaffirmed the NPC's position of the highest organ of state power by empowering the NPC with full and monopolistic authority to examine the executive's processes and outcomes that in contradictory laws. Such designs made the NPC's supervisory function the final guardian of the legal society. Therefore, it is reasonable to assume that the wall-posters' strong 'rule of law' consciousness and the new Constitution's institutional settings would have resulted in the wall-posters' strong demands for the legislatures' strong supervisory function.

However, a survey of the *CUP* illustrates a contradictory 'picture'. There were many articles that, although having a clear understanding of the importance of examining political power, failed to go any further to convert such an understanding into specific NPC related functional demands. Examples of which were the articles (1) asking to

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[28] Its direct expression is that both of the masses and the legislators lacked the consciousness of deputy accountability. See O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies"; McCormick, *Political Reform in Post-Mao China: Democracy and Bureaucracy in a Leninist State*. p.145.

[29] Before the end of last Empire in 1911, the masses having no assistance from legislative deputies would seek assistance from the power holder of higher level than those who infringed their interests. See also the introduction to the historical roots of the Xinfang Petitioning.

keep and develop the form of wall-posters,[30] which was under the assumption that simply 'letting people speak' would adequately prevent the rise of any ambitious dictator;[31] and (2) pressing for the power holders to 'confess' and make an apology for not fulfilling their plans or commitments,[32] or even (3) shouting loudly the empty slogans of democracy and the rule of law principle without requiring any institutional response.[33]

To be sure, those advocacies weakened the wall-posters' demand for the NPC to fulfil the supervisory function of examination of government processes and outcomes. Its intellectual origin can be attributed to the effect of the two particularities of the spontaneously developed liberal democratic intellectual ideas. On the one hand was the non-institutional characteristic; on the other hand was the abovementioned 'low politics-high politics' division. To be specific, in the area of 'high politics' where the masses deliberately stayed away from getting involved, a lack of concern with preventing the abuse of political power by institutional constraints automatically led to the wall-posters' desire for leaders with high moral standard who has no need to be examined.[34] In the territory of 'low politics', a lack of concern for institutionalised politics was responsible for the wall-posters' idea that legal protection would be effective simply if the masses could directly use laws, particularly the Constitution to protect their basic rights. Its extreme expression was the abovementioned example of using the Constitution as an 'amulet' while overlooking the fact that the Chinese Constitution was indeed a 'flexible Constitution': in making a Constitutional amendment, the authority can simply do anything they wish in the name of Constitution.[35]

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[30] Xun Zhou, "Where should the Democracy Wall go: a discourse on socialist democracy (Minzhuqiang xiang hechu qu – jian lun shehuizhuyi minzhu)", *April Fifth Forum*, vol.8, cites in *CUP*, book 5, pp. 37-48.

[31] Xunjian Xia, "democracy should be promoted in the making of crucial decisions (zai dazhengfangzhen shang yao fayang minzhu)", *the masses reference news*, vol.1; cites in *CUP*, book 2, pp. 149-54.

[32] Anonymous, "The masses' right to know the truth (Renmin qunzhong de zhiqingquan)", *April Fifth Forum*, vol. 11, cites in *CUP*, book 7, pp. 27-36.

[33] Beijing Spring Correspondent, "Interviewing with 'Li-yi-zhe' ('Li-yi-zhe' fang wen ji)", *Beijing Spring (Beijing zhi chun),* vol.4, cites in *CUP*, book 5, p. 119.

[34] See Anonymous, "The masses' right to know the truth". In fact, besides the extremely limited number of wall-posters, such as Wei Jingsheng and Chen Erjin, the majority of the wall-posters chose either to avoid discussing supervision or to worship benevolent dictatorship.

[35] April Fifth Forum editorial, "An open letter to the NPCSC, the CPC Central Committee Commission for Discipline Inspection, and the Supreme Procuratorat", *April Fifth Forum*, vol.11, cites in *CUP* book 7, pp. 78-80.

This similar intellectual background also explains the wall-posters' understandings of the regime failsafe function. Regarding this function, previous discussion has shown its prerequisite of the NPC to be a supreme organ of state power with substantial (instead of formal) authority. For the wall-posters, an overwhelming majority of their articles either demanded an iron-handed and open-minded leader or a social movement in order to protect the regime from being controlled by a person with ambition of seizing an arbitrary power.[36] This fact illustrates that the majority of the wall-posters in the beginning few years of the post-Mao period still overlooked the fact that preventing any personal conspiracy of grabbing an absolute power is far from sufficient for the safety and stability of a regime. As a sharp contrast, less than ten examples can be observed in the seventeen volume *compilation* demanding for an institutionalised regime 'failsafe' mechanism,[37] and none of which had ever linked that demand to the NPC institutions.

(4) Legitimising function

Because of the bitter sufferings during the CR, for this group of influencers, the CPC regime was not legitimised by official ideology or the 'negative legitimacy'. It is also worth mentioning that during the wall-poster movement, the sense of disillusionment had not been strong enough to result in the wall-posters' wish to question the legitimacy of the party and the regime. Instead, examples are everywhere in the *Compilation* showing that certain measures taken by the orthodox Marxist power holders have successfully restored the masses' confidence in the regime. Those measures include at least (1) 'directing' the 'discussion on the standard of truth', which shook the

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[36] For typical examples of the wall-posters advocating social movements, see Erjin Chen, "On proletariat democratic revolution"; Anonymous, "local cadre system must be thoroughly reformed (Ji ceng lingdao ganbu zhidu bixu chedi gaige)", *People's voice*, vol.3, cites in CUP, book 1, pp. 224-228; Xunjian Xia, "democracy should be promoted in the making of crucial decisions"; Anonymous, "The masses long for a 'Blue sky Bao (Bao was a local governor in Song dynasty and has been the incarnation of justice in Chinese culture.)' in this era (Qunzhong xiwang you xinshidai de bao qingtian)", *Seeking Truth*, vol.8, cites in *CUP*, vol.3, p.186; Xun Zhou, "Where should the Democracy Wall go: a discourse on socialist democracy"; Anonymous, "Martyr Zhang Zhixin and the Party (Zhang zhixin lieshi he dang)", *April Fifth Forum*, vol.11, cites in *CUP*, book 7, pp. 10-13. For typical examples of calling for an "iron hand" law guardian, see Anonymous, "Records of the demonstration outside the Xinhua gate on twenty eighth of August (ba er ba xinhuamen qian qingyuan jishi)", *Exploring*, vol. 5, cites in *CUP*, book 4, pp. 56-59; Anonymous, "Hu Yaobang: A worrier fighting agasint 'modern superstition' (Po chu xiandai mixin de yongshi – hu yaobang)", *Beijing Spring*, vol.3, cites in *CUP*, book 4, p. 165.

[37] Qing Liu, "On the necessity of political reform from the perspective of former Primer Zhou's suffering (ye cong zhouzongli de zaoyu tan tizhi gaige de biyao)", *April Fifth Forum*, vol.3, cites in *CUP*, book 4, p.72; Jimin Gao, "Stick to Marxist theory of the state and the path of Paris Commune style democratic system (Jianchi makesi zhuyi de guojai lilun, zou baligongshe minzhuzhidu de daolu)", *Beijing Spring*, vol. 7, cites in *CUP*, book 8, p.96; Anonymous, "Socialism is a process (Shehuizhuyi shi yige guocheng)", *April Fifth Forum*, vol. 15; cites in *CUP*, book 10, p.34.

intellectual foundation of Maoist radicalism. (2) Reversing the verdict of the April Fifth movement that was launched by the masses to mourn the death of Premier Zhou and was suppressed by the Maoists, which showed the power holders' wish to guard the democratic rights of the masses. (3) Introducing retrials to several typical cases of unjust trial,[38] which was appreciated by the wall-posters as a crucial sign of the power holders' wish to rebuild the legal system. (4) The power holders in the 1980s engaged in systematically restoring the 'political order' of the 1950s that had been damaged by the CR. Such an 'order' means to restore basic decision-making processes and to rebuild the political authority that was not in the CR radical basis. For the wall-posters, the above four measures adequately legitimised the regime, by which they did not demand the NPC to further legitimise it. It explains why quite few articles can be seen demanding the NPC to have greater changes in fulfilling the legitimising function.[39]

3. Institutional design

According to primary evidence, the wall-posters' attempt at designing new NPC related institutions faced a significant dilemma between not challenging the party supremacy and making the NPC the supreme organ of state power.[40] Facing this conflict, institutional designers of this group normally took three strategies.

The first one was 'blurring'; namely, the designer hedged this conflict by blurring certain basic roles of the party and the legislature. There were articles advocating the checks and balances of four powers – besides the three commonly known branches was the branch of the CPC.[41] In advocating so, the wall-posters indirectly challenged the party's supreme post in the regime by at least introduced a checks and balances system, emphasised the NPC's supreme post, while largely avoiding responding to the issue of party-legislature relation. However, this advocacy overlooked the basic institutional difference between political party and the political institutions.

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[38] The most typical example was the Zhang Zhixin case. Zhang was sentenced to death and was killed by an inhuman manner for challenging Maoism. This case had become a landmark event in the post-Mao period; one of the wall-poster journals was named after her.
[39] The only observable case is Chinese human rights association, "Nineteen declarations of Chinese human rights (Zhongguo renquan xuanyan shijiu tiao)", *Chinese Human Rights (Zhongguo renquan)*, vol.1, cites in *CUP*, book 2, pp. 187-90.
[40] Xiang An, "Rethinking 'long live the people' (Renmin wansui zhiyi)", *April Fifth Forum*, vol. 3, cites in *CUP*, book 4, pp. 67-70; Xiang An, "Anxious of the people after exciting (Renmin gaoxing zhihou de youlv)", *April Fifth Forum*, vol.11, cites in *CUP*, book 7, pp. 20-21.
[41] Shu Xu, "A preliminary discourse on contemporary social change in China (zhongguo dangdai shehui biange zhi qiantan)", *April Fifth Forum*, vol.4, cites in *CUP*, book 4, p.91.

The second strategy was 'substituting'. The wall-posters taking this strategy normally highlighted certain existing institutions or created a seemingly new institution (which was *de facto* similar to the existing ones) to carry out the function of the NPC, by which the issue of 'who is the highest' was avoided. For the former situation, there were articles demanding the judicial power, including the Courts and the Procuratorates, or even the public security department (police system), to fulfil the function of guarding the Constitution, which should clearly be the NPC's responsibility;[42] there were also an article giving the CPPCC the post of the second chamber and providing it with the equal functions to the NPC.[43] For the latter situation, for example, there was an institutional design creating a Roman *Concilium Plebis* style organisation that had the aim to protect the grassroots masses by helping the masses to petition against the authority-led grievances and overseeing the activities of the judicial power and the government.[44] However, the poster ignored the fact that these functions have already been allocated to the NPC by the Constitution.

The third strategy, which can be called 'initiating', resulted in a kaleidoscopic variety of initiated norms, by which the designers' genuine aim was camouflaged. The most commonly seen initiative was the establishment of a president, despite the fact that the presidential system was never adopted in any established institutional design after 1949.[45] Cases of this kind seems to suggest that the making of such design came from the notion that the party-legislature relation in China was a dead-end, and therefore having an initiated institution to undertake the function of the legislatures became an acceptable alternative.[46] The designers focused on initiating new institutional designs normally had a concern with (or at least pretended to be) not trespassing the CPC's bottom line, which therefore resulted in many initiations having a clear hybrid nature. Its direct outcome was that many designs of this type were largely not understandable

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[42] Anonymous, "Resolutely protecting the civilian's democratic rights (Jianjue baozhang gongmin de minzhu quanli)", *Seeking Truth*, vol, 4, cites in *CUP*, book 2, p. 125.

[43] Qing Liu, "On the necessity of political reform from the perspective of former Primer Zhou's suffering".

[44] Anonymous: "Draft proposal for the change of social political system (Bian fa cao an)", *Science, Democracy, and Legal ruling (Kexue minzhu fazhi)*, vol.3, cites in *CUP*, book 8, pp.323-25.

[45] In many cases China's head of the state is called as president; however in Chinese language he was called as 'chairman of the state'; 'president' has its special meaning of the head of the state in those counties with the presidential system. The use of 'president' in wall-posters suggested an introduction of a brand new institutional design.

[46] See Anonymous, "A preliminary study on the necessity of our revolutionary regime's demand for a President (dui woguo geming zhengquan xuyao shezhi zongtong yi zhi de chubu renshi)", *Seeking Truth*, vol. 5, cites in *CUP*, book 2, pp.133-135; Anonymous, "Who can guard the fully authority of the constitution? (Shui neng baozheng xianfa quanbu shishi?)", *Seeking Truth*, vol.10, cites in *CUP*, book 4, pp.119-20.

and even meaningless. For instance, there were articles demanding a two-party system in the NPC to make it possible of creating a 'mutual supervision' mechanism. To avoid censorship from the authority, the advocates added that both parties should be the Communist party. [47] Another typical example of the conceptual abnormity was the 'power-divisional dictatorship (Fen quan zhuan zheng)', which was clearly a hybrid of the demand for a checks and balances system and the deliberate avoiding of being denounced for denying the CPC's class dictatorship principle. [48]

This research claims that those three types of strategy had two intellectual origins. Firstly, because their intellectual background largely consisted of orthodox Marxist ideas, this group of influencers had no strong wish to challenge the party supremacy, although the CPC ruling resulted in bitter memories and grievances. Secondly, in designing the NPC' related new institutions, the wall-posters, particularly those who took the second and third strategies created a large number of institutional designs that lacked realistic credibility and feasibility. This research claims that such infeasibility was directly linked to their second intellectual characteristic that they are the group of influencers who were most unlikely, compared with the other influencers, to have chances of getting in touch with external ideas, particularly the institutional designs outside China. This fact explains that compared with the designs made by the RLDIE, those made by the wall-posters were much more infeasible. It is reasonable to argue that the wall-posters had only an extremely vague impression of Western political systems, and most of them equated Western politics as the American political system. The author's survey of the *CUP* shows that almost all articles discussing the borrowing of the advantages of the 'bourgeois politics' advocated a President and a system of three-division of political power. Documentary evidence also shows that the wall-posters' understanding of those systems were in a rudimentary stage and had many misunderstandings, which can be said to be caused by an over-simplified knowledge about Western politics – the wall-posters knew it largely from official propaganda.

The expression of such misunderstanding that resulted in many infeasible institutional designs includes seeing democracy as the rule of majority and as a "working style (Zuo

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[47] Erjin Chen, "On proletariat democratic revolution", esp., pp. 153-58; Anonymous, "One Party, several Parties, which one is better? (shi yige dang hao, haishi jige dang hao?)" *Democracy bricks (Minzhu zhuan)*, vol. 2, cites in *CUP*, book 6, p. 230.
[48] Erjin Chen, "On proletariat democratic revolution", p. 197. Another expression can be seen in Anonymous, "Classless society betrays Marxist theory on state", *Seeking Truth*, vol.7, cites in *CUP*, book 3, pp. 171-74. This article discussed many liberal democratic ideas while could not avoid using Marxist class struggle discourse, which resulted in a very strange hybrid.

Feng)" rather than a principle in institution design.[49] At the same time, the wall-posters' very limited knowledge about American politics should be responsible for the overlooking of several essences of that system, such as the institutional designs preventing the 'tyranny of majority'. Furthermore, evidence shows that the wall-posters may also, to some extent, have misunderstandings of orthodox Marxism: they hoped that the institutions could practice the original designs of early Marxist gurus such as Marx, Engels, and Lenin. However, critical misunderstandings weakened this attempt. For example, Engels' *Introduction to Karl Marx's "The Class Struggle in France 1848 to 1850"* that identified several principles of socialist representative democracy and institutional settings was incorrectly cited as evidence in testifying that classic Marxism advocated direct democracy rather than representative democracy.[50]

Besides the above listed misunderstandings, there were an extremely limited number of wall-posters that clearly claimed the NPC's post of the supreme organ of state power by stressing the party's in-the-legislature characteristic. Such a claim had a thoroughly distinct intellectual background – a largely self-grown liberal democratic ideas and a belief emphasising that the vanguard power holders would be seduced into corruption if political power lacked external supervision. Consequently, these articles directly challenged the two principles of orthodox Marxism. Quite reasonably, these articles were very limited in number and were normally found in those wall-poster journals focusing primarily on political issues or taking a greater antagonistic attitude toward the CPC regime. For the wall-posters of this kind, those comparatively modest ones claimed a two-party or multi-party system in which two or more of them would compete with each other in the legislature.[51] There was also a comparatively radical side; for example, a wall-poster journal printed out an aggressive talk made by Wang Xizhe, the co-author of the earliest and influential pro-democratic "Li-Yi-Zhe" wall-poster. In this article Wang advocated an institutional design that not only urged the party to stay in, instead of towering over, the legislature, but also granted the NPC a higher post than the party. Specifically, Wang's design highlighted that the CPC should be responsible to the NPC; the Supreme Court and the Supreme Procuratorate should under the control of the NPC. Under Wang's design, the party's power is confined in the NPC and the latter

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[49] Anonymous, "Reflections on the meaning of democracy (Dui minzhu yiyi de yidian kanfa)", *Seeking Truth*, vol. 17, cites in *CUP*, book 6, pp. 89-90.
[50] Jimin Gao, "Stick to Marxist theory of the state and the path of Paris Commune style democratic system".
[51] For example, Chinese human rights association, "Nineteen declarations of Chinese human rights".

has full authority to examine all of the works of the government.[52] Compared with Wang's design that gambled all on the NPC, a default understanding of the modern party politics has been that the activities of the party, and the executive under the leadership of the party, were only partially supervised by the legislative and the judicial branch. Having equal importance were other forms of balancing mechanisms, particularly the elections, in which parties failed to inspire its voters would lose all or part of its power. Clearly, radical designs like that advocated by Wang were at the peril for over-highlighting the role of the legislatures, which was *de facto* to overthrow a Leviathan by making another Leviathan.

II. Pro-democracy students

The 1982 Constitution re-defined free speech and removed the masses' political right of publishing wall-posters, quickly resulting in the end of wall-poster movement. In the remaining period of the 1980s students were the major participants of every pro-democracy movement. The pro-democracy students in the 1980s have been intensively focused and studied by academic research. Pioneering researchers normally took socio-political perspectives trying to reveal the movement's role in promoting democracy, rather than facilitating the development of any specific institution. The only observed exception attempting to illustrate the students and their linkage to Chinese legislative development was the study of the student demonstrations for open and non-manipulated LPC elections during 1979-1982. Furthermore, none of the specific studies of the Chinese legislative development saw the students as a notable influencer.

However, there were several examples showing that the pro-democracy students in the 1980s were by no means a group of people having no concerns with the NPC. The most salient example happened in 1989. Prior to the student demonstration finally becoming radical and violent, student demonstrators tried at least two times to seek salvation from the NPC. However the NPC's negative responses finally enraged them and resulted in their radical actions. The first attempt happened in April, in which students from Beijing University launched a petition to the NPC. When their seven specific demands were negatively responded, the demonstration became more radical – students occupied the Tiananmen Square and later launched a hunger strike.[53] The second attempt happened

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[52] Xizhe Wang, "The leadership of the CPC and the people's supervision power".
[53] Wagner, "The Strategies of the Student Democracy Movmeent in Beijing." pp. 43-80.

on the twenty fifth of May; when Wan, director of the NPCSC, openly supported the suppression, a sense of desperation became pervasive among the students, which finally made the tragedy inevitable.[54] Documentary evidence was also observed showing that the demands for holding the NPCSC conference was still one of the slogans in the student demonstrations merely less than half month before the incident finally happened.[55] The above evidence illustrates that the pro-democracy students was not a group of influencers knowing nothing about, and having no interest in, the NPC's function. The above discussion shows it is valuable and necessary to explore and explain the pro-democratic students' roles in the 1980s NPC development.

1. Social and intellectual background

In general, the CPC's policy guideline during the period of 1949-1978 saw educated intelligentsias as part of the inimical class.[56] Although this guideline was completely abolished in the 1980s, college students in this period were still in a disadvantaged status both sociologically and politically (e.g. bad living condition and lack of political participation). Its direct outcome was the students' growing demands for not only intellectual independence (e.g. free from ideological censorship) but also a greater influence and participation in the reform process. Specifically, the institution offered neither sufficient variety of channels for the students to participate in politics, nor did it provide the students with an effective and institutional mechanism that could be used to petition for any demand. Therefore seeking social wide salvation, the most radical way in Coser's typology, was the most commonly used strategy by the students.

Having an equal importance with the students' lack of institutional ways of political participation was their deteriorating living condition, which has been highlighted by many pieces of socio-political research trying to explain the root of their radicalism.[57]

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[54] Baum, *Burying Mao : Chinese Politics in the Age of Deng Xiaoping*. p. 270.

[55] Liang Zhang et al., *The Tiananmen Papers,* (London: Abacus, 2002). p. 363.

[56] The intellectuals in Mao's theory belonged not to the proletarian class, thus need an ''intellectual revision''; see, Roderick MacFarquhar, *The Hundred Flowers Campaign and the Chinese Intellectuals,* (New York,: Praeger, 1960). Chapter 1. See also Maurice Meisner, "Utopian Goals and Ascetic Values in Chinese Communist Ideology " *The Journal of Asian Studies,* 28, no. 1 (1968): 101-10.

[57] Lynnt White, "Thought Workers in Deng's Time," in *China's Intellectuals and the State : In Search of a New Relationship*, ed. Merle Goldman, Timothy Cheek, and Carol Lee Hamrin, (Cambridge, Mass.: Harvard Univ. Press, 1987). pp. 253-74; Wagner, "The Strategies of the Student Democracy Movmeent in Beijing."

Hu's study applied the concept of 'relative deprivation'[58] to explain the reason that radical strategies were proved to be more popular since 1986: the economic reform since that period led to many side effects. The most devastating one was the rapidly growing rich-poor division caused by corruption and two-digit inflation. It provided the students with a sense of relative deprivation and made them realise that their capabilities were unjustly valued.[59] The Beijing city government made an expedient new policy to ease the burden on intellectuals by adding new welfare provisions just one month before the incident, which is another crucial sign of the linkage between the worsening living condition and the political excitement.[60]

Taking 1986 as a watershed, the pro-democracy students' primary concern with social political issues had a dramatic difference. They focused on the LPC elections during the period 1979 - 1982. Since 1986, the deteriorating living conditions, worsening corruption, and perhaps the authority-led attempts at reforming the political system, gave student movements a greater anti-establishment nature. Simultaneously, at that stage, the students had clearly less concern with the People's Congress elections, as well as many issues regarding the NPC institutional reforms.

Despite the changes of concerns, the pro-democracy students' intellectual background was largely consecutive. In general, this group of influencers can be allocated in the C1-A1 section of the spectrum. Such an allocation was determined by two factors; on the one hand, pioneering research noticed that college students in the 1980s were a group of people who had undergone perhaps the most profound disillusionment with communist ideology.[61] They were also the major force advocating the rise of the non-Marxist intellectual ideas. Although such an intellectual importation faced many hindrances that resulted in its many flaws, the college students, particularly those who were vividly

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[58] Relative deprivation is a term regarding the collective value satisfaction and the potential inclination to use violence. It is defined as "actors' perception of discrepancy between their value expectations (the goods and conditions of life to which people believe they are rightfully entitled) and their value capabilities (the good and conditions they think they are capable of getting and keeping)". Ted Robert Gurr, *Why Men Rebel*, (Princeton: Princeton University Press, 1970). p.24.

[59] Hu, *Explaining Chinese Democratization*. p.113; it is overlooked by the author that in Gurr's study, relative deprivation is not only a concept regarding one's own welfare; having equal importance are the so called 'power value' and 'interpersonal value'. In the 1980s, the students' widespread feeling of being overlooked in the reform period should also be a reason of the relative deprivation. A related research is McCormick et al., "The 1989 Democracy Movement: A Review of the Prospects for Civil Society in China".

[60] Yun Liu, "Beijing boots education funds", *BR*, Vol.32, No.19 (8 May 1989).

[61] What worth emphasising is that such feeling not only originated from the CR tragedy, but also from the worsening situation of corruption. See, e.g. Vogel, *One Step Ahead in China : Guangdong under Reform*. p. 24. For this group, the corruption made the power holders' many attempts in the post Mao period to restore the reputation of Marxism useless.

involved in the pro-democracy movements, were clearly believers in liberal democratic intellectual ideas. Because of that, severe conflicts between the students attempting to defend such ideas and the authority trying to solidify the Marxist tenets were seen in every scene of the pro-democracy movements.[62] On the other hand, their liberal democratic ideas were more 'purified' because they largely refuse to acknowledge the nationalist aim of national greatness and its ensuing lack of concern with maintaining a centralised and authoritarian political power. Regarding the relationship between national salvation and democracy, Calhoun's research clearly illustrates that the students believed that intellectual enlightenment was the prerequisite of the national salvation, and the national salvation was the result of enlightenment.[63] This finding shows that the students saw intellectual enlightenment, rather than national greatness as their priority. Moreover, perhaps a ubiquitous trend that the revolutionary students always prefer pursuing pure ideological and more sophistic aims rather than those specific or utilitarian aims also contributed to the students' such intellectual stand.[64]

2. Students and the NPC in the 1979-1982 movement

In the early stage of post-Mao period, the primary focus of official's policy guideline was to strengthen 'socialist democracy and legal system'.[65] Although the authority used 'socialist' to prevent it from being used by the pro-democracy reformers to demand any change going beyond the authority's maximum tolerance, this guideline could be a perfect catalyst accelerating the development of certain NPC functions. At least, it could be applied to the demands for a legislature with greater transparency, greater power of supervision, and perhaps a more democratised decision making process. Therefore, the core aim of this section is to uncover the reason for the pro-democracy students' lack of concern with the opportunities of using the official's policy guideline and perhaps its ensuing new laws, including the Constitution and the Electoral Law, to demand

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[62] Such conflicts can be observed early in the students' struggling for deputy elections before 1982. Evidence illustrates that those student candidates who denied the 'basic concepts of Marxism' were persecuted, including being denied to give a job, or a forced intercalation of schooling. See Chen, *Democratic Experimentation under Party Dictatorship*.

[63] Craig J. Calhoun, *Neither Gods nor Emperors: Students and the Struggle for Democracy in China,* (Berkeley: University of California Press, 1994). p. 192.

[64] A related research can be found in Lipset's study of the 1960s student revolt in Berkeley; see Seymour Martin Lipset and Sheldon S. Wolin, *The Berkeley Student Revolt: Facts and Interpretations,* (N.Y.: Anchor Books, 1965). p.1.

[65] It was the slogan of the path-breaking Third Plenum conference in 1979. Specific discussion is available in Shiping Zheng, *Party Vs. State in Post-1949 China: The Institutional Dilemma,* (Cambridge: Cambridge University Press, 1997). p. 161.

legislative functional and institutional changes, while just narrowly focusing on a fair and non-manipulated elections of the township[66] and county level People's Congress.

Regarding the studies of the student movements related to, or caused by, the LPC elections being manipulated, previous researchers always highlight the new statements in the Electoral Law that introduced many new elements to the elections, particularly (1) an allowance for a limited extent of electoral campaigning that was not at all possible before the end of the Maoist era; (2) setting the 'more candidates than posts' principle to be an obligatory, and (3) advocating the secret ballots institutions. Pioneering research seems to believe that those innovations attracted the students' concern and made the electoral matters their primary focus.[67] Such an explanation seems quite tenable, even some of the recollections written by the pro-democracy student echoed to it. However, it is weak in making a sensible response to the concern of this research as it cannot answer the question why students at this period overlooked all of the NPC functions and institutions except the elections: to highlight one's concern with one thing cannot be a tenable explanation to the reason for overlooking another thing.

Based on documentary evidence, particularly the recollections of the people who witnessed or participated the movement, this research argues that the key factor of understanding the students' focus on LPC elections rather than strengthening the NPC's particular functions is to see the fact that the former was perhaps the only channel for them to raise a society-wide awareness of their demands without irritating the authority. In other words, to focus on the local elections was not an expression of their strong demand for a representative function of the LPC; instead, the local elections as an officially established way of political participation were a perfect camouflage of the students who aimed to seek social salvation by a safer strategy. Hu, a well-known student activist in the elections in Beijing University who was elected as a deputy for Haidian district People's Congress, explained the reason he took part in the election in an interview with a Taiwanese journalist:

> *To be told from the authority that "you can protest, but you cannot win" is not awful, for everyone knows that Rome is not built in a single day; however, it is frustrating to see that "you can protest, but all your deeds would never be heard by anyone", for the sum of even thousands zero is*

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[66] In major cities where the majority of universities are located, township constituency is named district (Qu) constituency.
[67] Nathan, *Chinese Democracy*. pp. 200-201.

always zero. Now the problem is, in a totalitarian regime, it is not impossible for the authority to totally erase certain thing, which is the most terrible thing of such regime.[68]

In the interviews with three university lecturers who were college students in the 1980s, they confirmed that participating in the election was at that time their only possible and 'legal' strategy of getting in touch with politics that were always close to public participation.[69] Clearly, the issue of explaining the reason for the pro-democracy students' concern with the local legislative elections is replaced by the issue of exploring and explaining the pro-democracy students' real claim behind their concern with elections.

Unfortunately, there is not enough documentary evidence to provide researchers with enough sources. However, based on a limited evidence, it can be confirmed that at least in those leading universities, particularly in those universities located in the major metropolitan areas, the pro-democracy students clearly understood the aim (functional demand) and the path (specific institutional design) of political reforms, including the reforms of the NPC. In his campaigning speech in Beijing University dining hall, Hu made two claims that model worker deputies should be removed from the People's Congress; similarly, the custom of allocating seats for the purpose of positive discrimination should be abandoned. According to him, the two things seriously hampered the deputies making reasonable decisions.[70] In his leaflet for an electoral campaigning, Wang, an influential political activist studying in Beijing University, advocated his four claims for political reform:

1. To increase intra-party democracy by reforming the party congress; to carry out intra-party separation of powers. To establish new committees and independent inspecting commission in the party congress, and to fix the tenure length.

2. The separation between party and the executive, which included using self-governing organs to replace the party committee's power to lead any economic sector; abolishing the party committee's power to directly lead

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[68] Ping Hu, "the reason I wrote 'on free speech' (Wo weishenme xie 'lun yan lun zi you')" in Li, *Mainland China Intellectuals on Politics, Society, and Economy*. pp. 31-66.
[69] Interviews, 10-10- 2011; 11-10-2011; 27-11-2011.
[70] Xiangyang Chen, "On That Year When Electoral Campaign Was Held in Beijing University (Dangnian beida jingxuan shi)", http://www.360doc.com/content/10/0312/19/43333_1851682 2.shtml, (accessed 07-05-2011).

or intervene in the function of the People's Congress of equal level, by which the party can influence the Congress only by its party group. The separation is also done by removing the fiscal burden of paying salary for the staff members of the CPC committees.

3. To introduce an intra-government separation of power by the specific designs aiming to strengthen the PCs, to guarantee judicial independence (with a special emphasis that only the people's congress can recall the judges), and to abolish the life-long tenure of the administrative head of each level.[71]

4. Demand for a pluralised society by certain institutional designs facilitating the growth of self-governance organisations and cutting censorship.[72]

Note: Wang's specific institutional designs having no relation to the legislative reforms were not cited.

Chen, another candidate for Haidian district People's Congress deputy election and a student activist, posted a draft NPC Organic Law in the Beijing University campus (to be sure, its purpose is to advocate his claims rather than to genuinely influence the making of this law):

The NPC as a soviet style legislature should be transformed into a "checks and balances" institution; the specific institutional designs include (1) to reduce the size of the plenary session to five hundred; (2) to remove the Standing Committee; (3) to extend the length of annual Plenary Session meeting to at least eight months; (4) deputies to be full-time and be given a secretary; (5) to remove the deputies elected from the armed force to prevent military intervention; (6) to enhance transparency by opening conferences to public access and publishing NPC hansards; (7) to protect

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[71] Although the author called it 'intra-government' separation, his genuine demand, illustrated by the specific claims, was checks and balances.
[72] Wang's electoral campaigning leaflet; cites in Ziming Chen, "Thirty Years of the Opening Up: From Excitment to Fatigue (Gaige kaifang sanshinian, cong kangfen dao pibei)", *Independent Chinese Pen Center Webpage*, http://www.chinesepen.org/Article/hyxz/200806/Article_20080 614023122. shtml, (accessed 03-04-2011).

freedom of press by authorising the NPC to establish an elected press administration agency.[73]

It is worth mentioning that the above cited evidence of the students' NPC function related demands, although shows their clear understandings of the NPC's 'should-be' roles and positions, also illustrates the students' quite similar drawbacks to the wall-posters: (1) they avoided discussing the party-legislature relation. In Wang's election campaigning leaflet, power separation between the three branches was mentioned. However, his corresponding institutional design, emphasising the establishment of a party group, failed to respond to the expected separation because it did not illustrate the boundaries between the Party group and the NPC; Chen's draft law, although stressing its aim to create a checks and balances system, focused thoroughly on intra-NPC institutional designs and did not discuss inter-institutions relationships. (2) The pro-democracy students misunderstood the legislative representative function by equating it to an allowance to electoral campaigning. This misunderstanding arguably resulted in their unconcern with other aspects of this function, such as the legislative accountability and the voter-legislator tie. This finding illustrates that the pro-democracy students *de facto* had no strong functional demand for the legislature's representative function, which again highlights a fact that the grassroots reformers' concern with the legislative elections cannot be simply equated with a strong representative functional demand. (3) The students also stressed the NPC's role as protecting civil liberty; however, specific institutional designs of this kind did not adequately respond to such demands. Chen's design, for example, stressed only the protection of free press, while overlooked other more fundamental aspects of individual freedom. Moreover, in designing new NPC institutions, the students clearly borrowed the discourse of American political system (e.g. separation of three powers). However, as abovementioned, the difference between the Chinese political system and the American political system is critical (legislative sovereignty vs. separation of three powers), which means their designs lacked practicability and had a greater opportunity to result in censorship of the authority.

In a sharp contrast to the abovementioned deputy electoral campaigns in Beijing in which many specific demands aiming to reform the legislative institutional developments were advocated by candidates, campaigning in the 1980s were in some places seen to be merely a way of political participation. Evidence shows that such a demand for participation was inspired by the sudden release of social control after the

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[73] Cites in I.bid.

end of the Maoist totalitarian society in which students' demands for political participation were coerced.[74] Those students who engaged in electoral campaigning merely for 'enjoying' political participation normally lacked a clear thinking of the NPC development, some of which even lacked a basic understanding of the Chinese political system, which was a sharp contrast to the students discussed above who had clear demands for NPC institutional changes.

Evidence shows that such a contrast was arguably caused by the students' uneven chances of knowing external intellectual ideas: for those students who had clear demands for the institutional changes, their understanding of both the 'should-be' institutional designs in the official promulgated laws and many foreign 'models' resulted in their clearer consciousness of how the political institutions should be developed, which led to their greater interest in the reforms of the 'high politics', including the NPC reforms.[75] Correspondingly, it can be observed that those students merely enjoying participating in the elections had less knowledge about, and therefore had less interest in, the institutional designs of the political institutions. In his recollection, Yao, now a very famous 'independent candidate' of the LPC elections, wrote that:

> *In the spring of 1980, when I took part in as a candidate in the Congress election of the constituency of Qianjiang Normal College in Hubei where I studied there, I and my classmates did neither know that voting is a legal right for every civilian, nor did we know each voter has in the meantime the right to be a candidate, let alone the notion that the voting shall be hold regularly, they are high in the sky!*[76]

An interviewee who was student activist in the 1980s complained that the election in his university in year 1980 finally ended up with violence and disorder as the electoral campaign gradually degenerated into personal abuse between candidates. Meanwhile, none of the participants, including both the voters and the candidates, had ever seriously

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[74] See, for example, McCormick, *Political Reform in Post-Mao China: Democracy and Bureaucracy in a Leninist State*. p.59. It is crucial to see that 'gross democracy' in the Maoist society cannot be seen as a strategy of political participation: the masses were strictly prohibited, and had no channel, to influence decision-making process that was controlled by the extremely limited number of power holders.

[75] Examples can be observed from Chen, "On that Year when Electoral Campaign was Held in Beijing University".

[76] Lifa Yao, "My Experience as a Candidate Campaigning for Election (Wo de jingxuan licheng)", *Universities Service Centre for China Studies, The Chinese University of Hong Kong*, http://www.usc.cuhk.edu.hk/PaperCollection/Details.aspx?id=3163, (accessed 15-12-2011).

thought of how to reform the legislative system. The interviewee believed that such a violence and disorder were caused by the students' over-heated zealous and passion for participation.[77] Nathan's study of the student-authority clash in the Hunan Normal College that was ignited by authority controlling of candidate nomination process showed an example of how students' particularly high passion of participation could change many rational designs and claims into a serious mass-authority clash consisting of hunger strikes and demonstrations. More importantly, within the process of that change, attempts at *reforming* the institutions were replaced by radical revolutionary impulses aiming to *demolish* the institutions.[78]

3. Student and the NPC in the 1986-1989 movements (1): intellectual pluralism

Since the latter half of the 1980s, many factors, such as unsuccessful economic reforms, highlighted the necessity for the authority to make more profound political reforms, thus the CPC since 1986 started the reform of 'the separation between the party and government' which had a greater profundity than the reform of the early 1980s. The power holders' original aim of the reform, to use the language of Chen, who is the former director of the central Government's Committee of Economic Reform, was to give economy and market more freedom by reducing administrative interference.[79] The CPC however tolerated or even initiated many reforms going beyond that aim. The most significant initiation of this kind was the attempts at loosening the party's all-dimensional control over political institutions (including the NPC).[80] Therefore, it is arguable that official-led reform should have facilitated the students' attempts at introducing related institutional designs.

However, the reality challenged that assumption. In the first large scale pro-democracy movement in this period that happened in December 1986, students in the University of Science and Technology of China launched a demonstration protesting against their lack of power to nominate candidates in the LPC elections. Available evidence does not support any conclusion that there was any attempt behind the protest to reform the

[77] Interview, 11-10- 2011.

[78] Nathan, *Chinese Democracy*. pp. 209-23.

[79] Yizi Chen, "The Decision Process Behind the 1986-1989 Political Reforms," in *Decision-Making in Deng's China: Perspectives from Insiders*, ed. Carol Lee Hamrin and Suisheng Zhao, (Armonk, N.Y.: M.E. Sharpe, 1995). pp. 133-52.

[80] As chapter seven illustrates, power holder like Peng Zhen emphasised many times that the CPC should lead the NPC 'politically' but not 'in every specific matters'.

People's Congress system. The forthcoming student movements had increasingly been unlikely to comprise any demand for legislative development: in order to reinforce the students in the National University of Science and Technology, student demonstrations were launched in other universities located in major metropolis such as Beijing and Shanghai. The noticeable thing of those demonstrations, according to Kwong's article, was that they no longer focused on any specific institutional matter (such as the NPC reforms); rather, their demands were gradually "sloganised" and focused on guarding and struggling for certain abstract principles. The most commonly seen slogans at this stage were democracy and liberty – both of which were abstract values. Based on Kwong's study, the student demonstrations gradually turned into a radical students' strategy illustrating their anger at certain abstract principles being infringed.[81]

This trend was much clearer in 1989. Bergere's research of the student slogans in 1989 provides a student demand list, showing that all of which, such as freedom of press and judicial independence, were linked with abstract values. Meanwhile, any specific institutional hindrance was not mentioned at this stage. The students' indifference to institutional change led to the author's conclusion that *"the transformation of the Chinese political system into a western-type democracy was not the main subject of these debates."*[82] Calhoun's study of the aims of the student pro-democracy movements generates a similar conclusion.[83]

Documentary evidence was also telling; the sit-in demonstration outside the NPCSC Hall in April 18, 1989, which was launched by the students from Beijing University and Renmin University, made the following seven points demand to the NPCSC:

1. Affirm as correct Hu Yaobang's views on democracy and freedom;

2. Admit that the campaigns against spiritual pollution and bourgeois liberalisation had been wrong;

3. Publish information on the income of state leaders and their family members;

4. End the ban on privately run newspapers and permit freedom of speech;

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[81] For example, Kwong noticed that there were demonstrations protesting against police abusing power, there was even a demonstration protesting against a university regulation that cut off power supply for student dormitory after eleven in the evening as it infringed liberty. Julia Kwong, "The 1986 Student Demonstrations in China: A Democratic Movement? " *Asian Survey,* 28, no. 9 (1988): 970-85.

[82] Marie-Claire Bergère, "Tiananmen 1989: Background and Consequences," in *Twentieth-Century China*, ed. Jeffrey N. Wasserstrom, (London: Routledge, 2003). pp. 239-55.

[83] Calhoun, *Neither Gods nor Emperors: Students and the Struggle for Democracy in China*. p.240.

5. Increase funding for education and raise intellectuals' pay;

6. End the restrictions on demonstrations in Beijing;

7(a). Hold democratic elections to replace government officials who made bad policy decisions;

7(b). Allow the government-controlled media to print and broadcast their demands.

Source: Andrew Nathan and Perry Link, *the Tiananmen Papers*. p.34

Note: There are two different versions regarding point seven. Nathan's data supports 7(a); however, there are researchers pointing out that 7(a) in Nathan's book is over-ambitious, which was highly possible the result of someone's deliberate distortion aiming to convince the power holders that students were over-radical and their demands shook the foundation of the regime.

The seven demands list, which was perhaps the most typical 'specimen' of the students' demand of that time, did not include any demand for institutional change, which further compares with the student's concern in the period of 1979-1982. However, previous research did not offer a solid explanation for this contrast: for those researchers that largely focused on exploring the reason why the radical movement started and why it had a violent ending, the students' demand for abstract values was normally used as evidence rather than an issue worth exploring. For those researchers trying to explain the reason for the movement being 'sloganised', an oversimplification can be observed that saw it as the result of the students' naivety and the in-born, and ubiquitous, anti-authority consciousness.[84] A typical example was the reflection made by Fang, the abovementioned typical RLDIE influencer:

> *The initial stage of the student movement aimed to fill up the vacancy of the official reform plan; namely, it confined the reform in economy and dared not to make any change in ideology. However, the students believed that it was intolerable. For this reason they demanded democracy and liberty. Sadly, the students were too naïve to have specific aims: they had nothing and simply needed liberty and democracy.[85]*

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[84] Stanley Rosen, "Value Change among Post-Mao Youth," in *Unofficial China: Popular Culture and Thought in the People's Republic*, ed. E. Perry Link, Richard Madsen, and Paul Pickowicz, (Boulder: Westview Press, 1989). p. 193-216.
[85] Li, *Mainland China Intellectuals on Politics, Society, and Economy*. p. 170.

Explaining the reason for the pro-democracy students' demands being 'sloganised' is vitally important, for it is the direct reason for the students' lesser focus on the reforms of the specific institutions. This research argues that the students' growing concern with the abstract values was the result of intellectual pluralism that can also be observed in the previous study of the RLDIE reformers. As mentioned above, intellectual pluralism, emphasising the importance for a society to have pluralised intellectual ideas, has a basic claim that intellectual matters were the foundation, causation, and even the prerequisite of any institutional matter. Advocating a radical change in intellectual ideas, the radical wing liberal democrats in China were a group in which intellectual pluralism was most likely to be seen. Furthermore, the pro-democracy students largely belonged to this group of people. For them, the rise of intellectual pluralism also had a social foundation of the authority's all-dimensional loosening of social control since 1986.[86]

To be different from many RLDIE influencers who had their own resources to advocate their reform plans (including newspapers and journals), the pro-democracy students not only had few resources to use, but were also weaker in resisting the authority's censorship. Therefore demanding for a censorship-free intellectual environment to make it possible of any further demand for political reform based on their liberal democratic intellectual ideas had priority over any demand for a specific reform. This argument explains, and is echoed by, the fact that free speech, free press, and free assembly were in the 1980s the students' priority. Similarly, the students also called for an independent legal system, which would increase the authority's difficulty in trying to gag any non-Marxist thought. For the same purpose, the students stressed their autonomy in order to resist the authority's encroach on the basic freedoms and civil rights.[87]

In addition to the students' greater concern with intellectual pluralism, their awareness of being a political elite and its resulting inimical attitude toward the consciousness of political pluralism can be observed. Arguably, this idea also contributed to the students'

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[86] An interesting timing coincidence, and the behind cause-and-effect relationship, can be seen between the students' demands being 'sloganised' and the CPC's decline of political control, particularly the control over university students. See Andrew J. Nathan, *China's Crisis: Dilemmas of Reform and Prospects for Democracy,* (New York: Columbia University Press, 1990). Chapter 6. Dingxin Zhao, "Decline of Political Control in Chinese Universities and the Rise of the 1989 Chinese Student Movement" *Sociological Perspectives,* 40, no. 2 (1997): 159-82.

[87] Therefore, this research argues that some scholars' claim would be an over-statement that students' certain autonomous organisations during this period, such as the Autonomous Federation of Beijing College Students, were an inchoate civil society. Examples of such claims can be seen in Unger and Barmé, *The Pro-Democracy Protests in China: Reports from the Provinces*. Introduction chapter.

increased focus on slogans rather than any institutional development.[88] As the study of the RLDIE has mentioned, the most typical expression of this idea was the believers' distrust of a general and direct election with universal suffrage. Such an attitude coincided with the pioneering research findings that the pro-democracy students' demand was that this group of people could participate in politics, whether the masses could do the same thing was not their concern. Bergère made the following statement:

> "(the student) called for a reform of the CPC that would bring people of quality to power, whom they, as intellectuals, could serve as advisers; very few of them were actually concerned with the problem of creating new institutions or modifying the structure of the state."[89]

At the same time, this group of people also did not fully understand the meaning of a pluralised politics. In his research of the 1989 student movements, Calhoun claimed that although the students acknowledged that the masses should be different in order to constitute a society, they did not go that far to recognise that politics should also be pluralised.[90] Mok's research mentioned that the students' understanding of democracy was largely synonymous with free speech,[91] which coincided with Nathan and Shi's social surveys made in 1990 that illustrated the apparently low level of political tolerance of the masses at grass roots level.[92]

4. Student and the NPC in the 1986-1989 movements (2): Conventionality

This part focuses on the explanation of the students' preference for participating in politics by a non-institutional approach. The most typical expression of the preference can be observed in 1989, in which the angry students tried to assume the NPC's responsibility by being both the supervisor of the regime and decision maker. For example, in the abovementioned seven points demand sent to the NPCSC, the student made decisions (point 1, 2, and 6) and acted as a supervisor by urging the publishing of

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[88] As the study of the RLDIE has mentioned, having political pluralism awareness is a crucial factor for, or even the prerequisite of, the rise of concern with the legislative development.

[89] Bergère, "Tiananmen 1989: Background and Consequences."

[90] Calhoun, *Neither Gods nor Emperors: Students and the Struggle for Democracy in China*. p. 190; Craig J. Calhoun, "Science, Democracy, and the Politics of Identity," in *Popular Protest and Political Culture in Modern China: Learning from 1989*, ed. Jeffrey N. Wasserstrom and Elizabeth J. Perry, (Boulder: Westview Press, 1994).

[91] Mok, *Intellectuals and the State in Post-Mao China*. p. 29.

[92] Andrew J. Nathan et al., *China's Transition,* (New York: Columbia University Press, 1997). 160-70.

high officer's income (point 3). 'Capturing' the NPCSC function and turning it into merely a petition organisation illustrated the non-institutional tendency which was another crucial factor that reduced the pro-democracy students' contribution to the NPC institutional reform.

The existing explanation of the students' non-institutional characteristic is simple, effective, and self-consistent: it claimed that the institutional channels in the 1980s were largely blocked or even did not exist; having no alternative choices, the students chose non-institutional channels. According to this view, the authority's unwillingness to establish such channels was the foremost reason.[93] However, it may not be the whole story. As several pieces of research show, in many cases the students directly applied the non-institutional strategy despite there being available institutional channels. In those cases, the institutions, including the NPC, were merely deemed to be a place for petition.[94] More importantly, there was no observed evidence showing that the students had ever thought of establishing or strengthening any kind of institutional channels of political participation. These pieces of evidence contradict the default explanation and require a new one from some new perspectives.

Conventionality, which has been perhaps the most widely emphasised intellectual characteristic of this group by many pieces of academic study, is worth highlighting. This research claims that its impact on shaping the students' preference of not using an institutional channel to fulfil their demands was largely ignored.

The conventionality of this group is not a new claim of this research. It is highlighted in many places: for the students, the disillusionment of the Marxist believes (particularly its two basic tenets) and the lack of knowledge about external intellectual ideas, resulted in a large intellectual vacancy that was filled with the historical remains of traditional Chinese political philosophy. Perhaps more importantly, pro-democracy students played a vitally significant role in the early twentieth century (particularly in the May Fourth Movement). This history became another source of conventionality that had an even stronger impact on the students than the intellectual legacies left by the thousand-year history. Many studies even pointed out that the students in the 1980s were deliberately

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[93] Goldman, *Sowing the Seeds of Democracy in China: Political Reform in the Deng Xiaoping Era*. p. 317.
[94] See generally Zhang et al., *The Tiananmen Papers*. Black and Munro, *Black Hands of Beijing : Lives of Defiance in China's Democracy Movement*. Baum, *Burying Mao: Chinese Politics in the Age of Deng Xiaoping*.

trying to copy the thought, strategy, and activity of their 'predecessors' in the early twentieth century.[95]

In general, pioneering research on the students' conventionality can be identified by three claims. First, the students inherited the consciousness of the conventional Chinese intellectual elite, which resulted in them emphasising a predestined role as being a 'political man' and a duty-bound responsibility of being a 'spokes people for the masses'.[96] Moreover, such a consciousness had an important characteristic of not encouraging its bearer to simply petition for the masses' specific grievance; instead, its bearer would fight for the welfare of the masses as a whole. To use the language of Liu, who was a student pro-democracy movement activist, *"throughout China's history there has been a tradition among intellectuals to be concerned about country and people, and to assume responsibility for governance"*.[97] Secondly, scholars highlight Confucian moralism of this group of influencer. In Solinger's language, it is a "proclivity to moralise and demand high behavioural standards from rulers".[98] The default use of this concept is to explain the pro-democracy students' sensitivity about corruption;[99] however, this research argues that Confucian moralism also encouraged the pro-democracy students to seek moral righteousness through engaging in self-sacrifice and self-devotion. In Liu's language, as a political man, what have the modern Chinese intellectuals tried to practice was a Confucian moral standard of *"be the first to worry (about one's country), be the last to enjoy (about one's personal happiness)"*.[100] Thirdly, the historical legacy of the early twentieth century, particularly the May Fourth movement, added new ideas into the historical legacies of the abovementioned two claims. The most crucial add-in was its bearer's preference of using violent and

[95] Jeffrey N. Wasserstrom, "Student Protests and the Chinese Tradition," in *The Chinese People's Movement: Perspectives on Spring 1989*, ed. Tony Saich, (Armonk, N.Y.: M.E. Sharpe, 1990). Ernest Young, "Imagining the Ancient Regime in the Deng Era," in *Popular Protest and Political Culture in Modern China*, ed. Jeffrey N. Wasserstrom and Elizabeth J. Perry, (Boulder: Westview Press, 1994). Joseph W. Esherick and Jeffrey N. Wasserstrom, "Acting out Democracy: Political Theater in Modern China " *The Journal of Asian Studies,* 49, no. 4 (1990): 835-65.

[96] Elizabeth J. Perry, "Casting a Chinese "Democracy" Movement: The Roles of Students, Workers, and Entrepreneurs," in *Popular Protest and Political Culture in Modern China*, ed. Jeffrey N. Wasserstrom and Elizabeth J. Perry, (Boulder: Westview Press, 1994). Timothy Cheek, "From Priests to Professionals: Intellectuals and the State under the CCP," in *Popular Protest and Political Culture in Modern China*, ed. Jeffrey N. Wasserstrom and Elizabeth J. Perry, (Boulder: Westview Press, 1994).

[97] Binyan Liu, *China's Crisis, China's Hope,* (Cambridge, Mass.: Harvard University Press, 1990). p. 43.

[98] Solinger, "Democracy with Chinese characteristics", *world policy journal*, fall 1989, p.625.

[99] Perry, "Casting a Chinese "Democracy" Movement: The Roles of Students, Workers, and Entrepreneurs."; Calhoun, *Neither Gods nor Emperors: Students and the Struggle for Democracy in China*. p. 238.

[100] Liu, *China's Crisis, China's Hope*. p. 43.

contentious strategies to petition. This preference would be particularly strong if the power holders were believed to be morally 'contaminated'.[101] Clearly, such a new essence radicalised the conventional self-sacrifice consciousness. The May Fourth movement was perhaps the first movement in Chinese history in which students became a force independent from the conventional meaning of 'the intellectuals' consisting of all kinds of educated individuals. Based on such an independence, the students as 'political men' for the first time applied the radical strategies including demonstration, class boycotting, and even vandalising, which differed dramatically from the conventional understanding of the intellectuals whose role of 'political men' were fulfilled largely by Coser's "boring from within" strategy or by peaceful persuasion.

Based on the above three claims, a largely overlooked linkage between the students' conventionality and their lack of wishes to advocate new institutional designs can be illustrated. For the pro-democracy students in the 1980s, their preferred strategy of political participation was based on the existing institutional settings. Its salient expression was the abovementioned students' preferred strategy of participating in the LPC deputy elections in the early 1980s. However since 1986, dissatisfaction accumulated because of their hardened living condition and the power holders' lowering moral standard (corruption); both of which generated a very similar social background to what had happened in the student pro-democracy movements in the early twentieth century. The similarities encouraged the students to learn from the May Fourth movement legacy of using a non-institutional and a self-sacrifice style petition to 'address' social and political problems. In addition, it is highly possible that because of the influence of the CR that was an anti-establishment and anti-political institution movement, the students in the 1980s had a greater inclination to be an anti-institutional reformer than their pioneers. To be similar to the wall-posters whose clear anti-CR attitude cannot eliminate the CR intellectual remains from their mindset, the students in the 1980s were also a generation that inherited the CR heritage, including its anti-institutional nature and perhaps a consciousness that violence could be used in order to accomplish certain 'correct' aims.

A notable thing is that the pro-democracy students taking their primary focus to philosophical issues by a radical strategy was extremely harmful to the institutional

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[101] The direct reason of the May Fourth Movement was that the government signed the Treaty of Paris after the end of the World War that unjustly transformed the German colony in China to Japan. According to the Confucian moral standard, it would be the worst crime for the power holders.

development of the legislatures: taking the May Fourth movement as an example, it finally led to the removal of three governmental officials; however, this outcome was reached purely by an outside pressure and not by an institutionalised decision making procedure. In the same vein, the students in the late 1980s shouted loudly many empty slogans such as liberty, democracy, and requiring the resignation of Premier Li. Those slogans were shouted too loud to allow a rigid scrutiny of how to develop the NPC.

Conclusion

To be different from the study of other three groups of reform participants, a lack of pioneering research of the relationship between the grassroots reform activists and the NPC reforms resulted in a dual task of this chapter, which was (1) to specifically illustrate their functional demands and institutional designs of the NPC; (2) to explain the findings in the former step, especially the noticeable particularities of this group of people, from the intellectual perspective. The research identified two particularities worth highlighting: firstly, the pro-democracy movements *de facto* made little contribution to the democratisation of the NPC, because the influencers' related demands were very weak. Secondly, a lack of concern for this group of influencers to use or reform the existing NPC institutional settings needs highlighting as it was a major hindrance for them to engage in the NPC institutional developments.

The intellectual perspective revealed that an intellectual complexity was largely responsible for the abovementioned particularities. For the wall-posters, although some people in this group had a clear 'rule of law' consciousness, their orthodox Marxist intellectual background, as well as the impact of certain ideas generated in the CR made it unlikely for them to engage in certain NPC institutional changes. For the pro-democracy students, their liberal democratic intellectual ideas were influenced by a series of factors, including (1) an over-simplified understanding of Western political systems, (2) a focus on intellectual pluralism rather than political pluralism, and (3) conventionality as the most important factor. The study confirmed the linkage between these impacts and the students' abovementioned particularities.

Chapter 11. Conclusion

I. Research Findings

As the concluding part of a research using Grounded Theory as basic methodology, this section focuses on the empirical findings from the previous analytical chapters; based on which, a series of factors are identified as being responsible for shaping the NPC's many unique institutional characteristics. This generates a refined theoretical framework that, by offering an explanative rather than a descriptive framework, not only overcomes the flaws of the pioneering research, but also answers the research question raised in the beginning of the thesis.

1. Functional demands' crux role in the legislative institutional development

The findings (or 'memos' in Grounded Theory context) of the empirical analyses in the previous chapters showing the influencers' functional demands and institutional designs are respectively listed in tables 15 and 16.

Table 15: *An overview of reform influencers' functional demands* (a list of alphabetic abbreviations for this table is shown in page 278)

	Power Holders	Deputy	Staff member	OMIE	NILDIE	RLDIE	Wall-Posters	Pro-democracy Students
Law-making	[S] A high efficiency, quick responding law-making body; new laws should be stable and feasible	[ND]	[S] Similar to that of the power holders	[S] Similar to that of the power holders	[O] High efficiency, quick responding. •Stressed the importance of democratising the decision making process	[ND] No specific demand for decision making function. •Focused on who makes decision – making of decisions should be based on the wishes of the majority of the masses		[NO]
Assent-Giving	[O] The NPC as a subordinate assent provider	[O] demanded by very few deputies; largely after 1988	[O] Similar to that of the power holders	[O] Similar to that of the power holders				[NO]
Representative	[O] Representation in a top-down direction •Illustrating high representativeness (Professional, regional, ethnical, and gender)	[O] Top-down direction; •Illustrating high representativeness •A limited demand for bottom-up	[O] Similar to that of the power holders	[O] Similar to that of the power holders	[O] •Representation in a top-down direction •Voters could select their deputies by votes without manipulation	[O] Deputies should be accountable to the voters	[S] local PC elections with no manipulation	[S] An instrument of raising society-wide awareness on certain concerns
Examination of government processes and outcomes	[O] Only oversees government processes and outcomes that are inconsistent with laws		[O] Similar to that of the power holders	[O] Examining activities in contradictory laws; •Preventing the 'rule by an individual' tragedy	[NO]	[S] Supervisory function on the principal of checks and balances	[NO]	[S] An instrument of seeking society-wide salvation and petition for grievances
Regime Failsafe	[NO] Relevant demands are observable; however they cannot be deemed to be the demands for that function as the influencers did not discuss the issue of overseeing the activities of the CPC				[S] NPC's authority to be an 'examiner' of the party			
Legitimising policies	[S] Prerequisite of obtaining performance legitimacy and negative legitimacy	[NO]	[NO]	[NO]	[NO]	[ND] Demanding the changes of the political system, no specific concern with the NPC	[ND] Because the CPC's legitimacy crisis was not seen in this period	[NO]
Legitimising the regime	[ND]	[NO]	[NO]	[NO]	[S] greater transparency, participation, and accessibility			[NO]

Table 16: *An overview of reform influencers' institutional designs*

<u>**Part 1**</u>

	Power Holders	Deputy	Staff member	OMIE
Law-making	Strengthening the SC and other committees; allowing the participations of legal scholars in the bill drafting stage; law-making plans were made according to the demands of the executives		Institutional designs did not challenge the executives' control over the law-making process	Designs strengthening the SC and other committees
Assent-giving	Strengthening the SC; very passive in making new institutional designs that may increase the power and independence of the Plenary Session, including reducing its gigantic size and extending its short session period	Some deputies complained about being given prejudiced information in making decisions; however, no related institutional responses are observable		Designs ensuring deputies to be given unprejudiced information; however only focused on the SC
Representation	Focusing on deputy inspection related institutional designs; passive in democratising the electoral system, including the tiers of direct elections, allowance of electoral campaigning, and seats quotas, which would result in an increase to the bottom-up deputy-voter linkage and deputy accountability	Advocated the designs strengthening a top-down direction representation; although some deputies might have acted as a remonstrator petitioning for grass roots grievances, no designs facilitating the increase to a bottom-up representation observed	Designs institutionalising a top-down direct representation and preventing the deputies from being remonstrative; no designs about increasing accountability observable	Designs aiming to eliminate manipulating the deputy candidate nomination and giving deputyship as an award
Examination of government processes and outcomes	Designs resulting in the examining activities focusing only on processes and outcomes in conflict with laws. passive in making related procedural laws		Focusing on strengthening relevant committees, demanding new legislations protecting the examining activities.	Designs aiming to increase the NPC's power to the examining of the executives' illegal processes and outcomes
Regime Failsafe	Avoid discussing those institutional designs related to the issue of NPC overseeing the party or increasing the NPC's structural strength			
Legitimising policies	Advocating a series of new procedural regulations related to the processes of the NPC, the Standing Committee, and the NPC committees.			
Legitimising the regime				

		NILDIE	RLDIE	Wall Posters	Pro-democracy Students
Law-making		Institutional designs having no or very little feasibility, which were resulted from the conflict between nationalist ideas focusing on administrative performance and the liberal democratic belief stressing that law should be made according to the wishes of the masses			
Assent-giving		Institutional designs aimed at strengthening the weak and inactive Plenary Session			
Representation		Designs aimed at Strengthening the voter-deputy tie, preventing the candidate nomination process from manipulation, giving electoral campaigning more allowance, and increasing deputy accountability	Focusing on improving deputy accountability and giving more allowance to electoral campaigns; however lacked detailed and practicable institutional designs	Institutional designs preventing local elections from being manipulated	Manipulation-free and general elections in the LPC; allowance of electoral campaign; not focused on the NPC institutional reforms
Examination of government processes and outcomes		Designs aimed at increasing the power of the NPC to examine the executives' illegal processes and outcomes, establishing an institution examining the executives' activities and decisions that were incompatible with the constitution	Advocated institutional designs according to their understanding of the Western checks and balances institutional principle		
Regime Failsafe		Focused on the institutional flaw that the CPC was an power above the 'supreme power (the NPC)' Very passive in advocating any related institutional changes			
Legitimising policies					
Legitimising the regime		Actively advocated the designs aiming to increase transparency, participation, and accessibility	No specific concern with the NPC		

[O] Observed: evidence is observed showing the function was demanded by the influencer

[S] Strongly demanded: data shows certain function was strongly demanded by the influencer

[NO] No data available showing the influencer had ever demanded that function

[ND] Valid data can be observed showing that the influencer had no concern with the development of that function

From the above tables, the following conclusions can be drawn: basically, when examining the relationship between the reform influencers' functional demands and institutional design, evidence can be found showing that for each group of reform influencers, their specific demand that the NPC fulfil certain functions was the motivation for them to make and advocate an institutional design linked to that function. This basic relationship can be usefully divided into six categories of participant actions shown below. The reason for this is that in the 1980s there were several groups of NPC reform related influencers, where the different groups may have shared similar intellectual backgrounds, but may also have had differing intellectual viewpoints. Correspondingly, the different groups may have proposed different institutional designs. Some of which in reality may have had either matching or disparate characteristics. Therefore, identifications of the mechanisms by which those diversities finally influenced the path of the NPC institutional developments are crucial.

 (1) Any function would have had little opportunity to be strengthened by new institutional designs if it was not demanded by any influencing group or was demanded only by a few groups of influencers or those of limited influence. The institutional designs related to the NPC's 'legitimising the regime' function constituted a typical example – the NILDIE was the only group of influencers to demand that function; the related institutional developments were, correspondingly, barely observable. In contrast, different groups of influencers may share a common demand for a certain function; under that circumstance, two situations were observable. On the one hand, the different groups may have made and advocated identical or similar institutional designs to strengthen a function. Alternatively, diverse designs could also have been made by different groups even if they all focused on strengthening a single function.

(2) In the former case, the shared institutional design would result in a 'conjoined force' strengthening certain functions. For example, the shared demand (with only the RLDIE and the grassroots reformers as two exceptions) for an increase to the law-making function was responded to by the shared institutional design which strengthened the NPCSC and other working committees. This coincided with the findings of the pioneering observations that those developments were the fastest growing aspects of the NPC institutional settings in the post-Mao period (see review chapter). A not widely mentioned but equally crucial development in that period was the increased participation of legal experts at the law drafting stage; a growth in involvement increased by the shared demand for improvements in the quality of legislation that

would help prevent the new laws from being unstable and unfeasible. More importantly, the participation of legal experts, as actively advocated by the staff members and the OMIE, to some extent played a role in preventing the promulgation of certain articles of the new laws that were obviously unconstitutional or infringed basic civil rights.[1]

(3) For the second situation, if a shared functional demand was responded to by a series of diversified institutional designs, then all or part of those designs would fail to be institutionalised, because of the lack of a 'conjoined force' to push forward the institutionalisation of the proposed designs. A typical example was the failure to develop an effective 'examination of government processes and outcomes' function: although the power holders, staff members, and the intellectual elite all demanded greater involvement for the NPC to examine the executive's processes and outcomes in contradictory laws, only the NILDIE ever discussed the issue of judicial review. Such advocacies had a very limited influence (only observable from some academic journals) while receiving no response from other influencers. Consequently, these advocated and wished for changes were not institutionalised.

Another example was a lack of mass participation of the law-making process. Because only the NILDIE clearly advocated an increase in mass participation as an essential aim in the designing of the law-making related institutions, the law-making process was only opened to public access to a very limited extent, and those paths were not institutionalised.[2]

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[1] Judy Polumbaum, "To Protect or Restrict? Points of Contention in China's Draft Press Law," in *Domestic Law Reforms in Post-Mao China*, ed. Pitman Potter, (Armonk, N.Y.: M.E. Sharpe, 1994). pp. 247-65; Pitman B. Potter, "The Administrative Litigation Law of the P.R.C: Judicial Review and Bureaucratic Reform," in *Domestic Law Reforms in Post-Mao China*, ed. Pitman Potter, (Armonk, N.Y.: M.E. Sharpe, 1994). pp. 270-304; A perhaps most typical primary evidence is the making of the *Law on Assemblies, Processions, and Demonstrations* that, as mentioned previously, was the most typical expression of the rule by law concept that the law makers are exactly those who need to be constrained by that law. However, a detailed comparison between the first draft drafted by the ministry of public security and its final promulgated version can immediately reveal many differences. Most differences were the result of the endeavours of the legal scholars who tried to replace those directly unconstitutional articles with much milder regulative articles. For example, an article prohibiting the demonstrations by the people from different profession (e.g. labourers cannot demonstrate with students) was deleted; an article prohibiting the 'anti-CPC' demonstration was replaced by an article prohibiting the 'anti-Constitution' demonstration (although the outcomes were identical as the Constitution prohibits any behaviour aiming to subvert the regime). This comparison is made based on Song Rufen's "report to the NPCSC on the outcome of the scrutiny of Law on Assemblies, Processions, and Demonstrations", which is reported in *Xinhua Monthly,* issue 10, Vol. 540 (30-11-1988).
[2] Jean-Pierre Cabestan, "More Power to the People's Congresses? Parliaments and Parliamentarianism in the People's Republic of China " *ASIEN,* 99, April (2006): 42-69. Murray Scot Tanner, "Rethinking Law Enforcement and Society: Changing Police Analyses of Social Unrest," in

(4) Furthermore, if a group of influencer was particularly passive or inactive in demanding a certain function, or was overly enthusiastic in respect of a certain function, their impact on the development of corresponding institutional designs would be weak. The reason for the former situation was the advocates' lukewarm advocacy for the corresponding institutional designs. In the latter situation, designs that 'went too far' from the existing institutions lacked realistic credibility and feasibility. The former situation is easily understandable in considering the findings from this research's study of NPC deputies: although strengthening the law-making function was largely consensual among the influencers, it was not the focus of the deputies. An absence resulting from the fact that although many new institutions were introduced to strengthen the law-making function, none attempted to do so by giving NPC deputies more institutional support. The negative effect of the latter situation can be exemplified by the RLDIE's related institutional designs related to the demand for the function of 'examination of government processes and outcomes'. Their attempt at introducing an examining system of Western checks and balances was overly ambitious and lacking in feasibility, since, as previously discussed, the making of such change would result in a fundamental and wholesale re-designs of the political system.

It is crucial to highlight the fact that in the 1980s the power of the different groups was by no means identical. Although it is problematic to deem the power holders as the sole influencer of the NPC development, it is undeniable that those groups having, or being supported by, political power had a stronger impact on the institutional development than those with no political power who could only influence institutional development by seeking bottom-up support. This leads to the establishment of two complementary categories:

(5) If the power holders who were the primary influencers of the NPC institutional development expressed a strong dislike or a lukewarm attitude toward certain aspects of institutional design, it would be difficult for other influencers to institutionalise that design. This principle can be empirically confirmed by considering the development of the NPC representative function and the related institutional designs by various groups of influencers. The power holders preferred the institutional designs that would result in a much active representative function with top-down direction and high

Engaging the Law in China : State, Society, and Possibilities for Justice, ed. Neil Jeffrey Diamant et.al, (Stanford, Calif.: Stanford University Press, 2005).

representativeness; meanwhile, they did not want this function, in strengthening the deputy-voter tie, to either give deputies bottom-up support or make deputies accountable to the voters. Therefore, although at least five groups of influencers advocated, some of them even strongly encouraged, the related institutional designs that would strengthen that linkage – including free campaigns, direct elections, and manipulation-free candidate nominations – those designs were not institutionalised within the whole period of the 1980s.[3]

(6) It is also observable that the power holders may try to contain those institutional designs that clearly challenge the 'bottom line'. Designs trying to do so cannot have any opportunity to contribute to the institutional development. Under that circumstance, advocates normally chose to disguise their genuine designs by a camouflage of not challenging the bottom line. Examples can be observed from the NILDIE's many uncommon and 'DIY' terminologies and designs which attempted to strengthen the NPC's 'regime failsafe' function by giving the NPC an authority to examine party activities, while trying to avoid raising concerns and thwarting from the power holders.

2. Intellectual background as a crucial factor in shaping the diversity

The above listed six findings depict the functional-institutional linkage. A more important task of this chapter is to reveal the role of intellectual background in this linkage. The analytical chapters confirm that (1) there was a strong correlation between the influencers' intellectual background and their functional demand, which, in the light of the abovementioned principle number one, confirms that the intellectual diversity shaped the diversities of the functional demands. For example, all of the influencers having an orthodox Marxist intellectual position focused on the efficiency and the quick responding ability of the law-making function, while the influencers having a liberal democratic intellectual position focused on whether the laws are made based on the wishes of the masses. As another example, all of the influencers with orthodox Marxist intellectual background had no wish to end the manipulation of candidate nomination; however, believers in liberal democratic ideas had a strong wish to do so.

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[3] Certain developments can be seen as originated from those designs, including the establishment of deputy working stations welcoming voters' visits; however, they contributed very little to the fulfilling of the demands for a representative function with a bottom-up direction.

(2) Intellectual diversity also explains the observed phenomena that different groups may have generated different institutional designs though sharing an identical functional demand. For example, despite the function of examination of government processes and outcomes being a ubiquitous demand, believers in orthodox Marxism, including the power holders, deputies, staff members, and the OMIE, focused on the new designs expected to provide the NPC with increased authority to prevent governmental decisions and activities from conflicting with any promulgated or higher laws. Having liberal democratic ideas but still focused on some nationalist targets, the NILDIE preferred to make that authority stronger by institutionally providing the NPC with a judicial review style power. For the RLDIE with their stronger inclination toward the 'pure' liberal democratic ideas, advocated more Westernised checks and balances form of institutional designs.

Two additional factors regarding the role of intellectual backgrounds need to be highlighted:

(1) The power holders' abovementioned 'bottom line' was the expression of the orthodox Marxist intellectual background that can be specified in two tenets, which were (a) the society consists of classes who were inimical to each other; and (b) the CPC as the vanguard of the proletarian class automatically had legitimacy to exclusively control political power. It further explains the reason as to why any attempt at introducing new NPC related institutional designs made by the RLDIE and the pro-democracy student who had much 'purer' liberal democratic ideas were largely unsuccessful.

(2) It has been frequently observed, as highlighted in the analytical chapters, that those influencers with a liberal democratic intellectual position lacked a clear understanding of the institutional designs of foreign liberal democratic regimes, which increased their inability to introduce any specific and feasible institutional designs.

3. Intellectual consensus and an explanation of the imbalanced institutional development

Based on the findings of the above two sections, general NPC institutional changes in the 1980s can be described as follows: the key factor resulting in the changes to the NPC in the 1980s was the convergence (but not overlapping) of the two intellectual

backgrounds. This convergence created a series of intellectual consensuses that resulted in the reform influencers' sharing functional demands and institutional designs. For the orthodox Marxists, although the exclusive control of the political power was unchangeable, the fall of Maoist radical ideas and the rise in the importance of the pragmatic purposes resulted in their sharing demands for institutional functions with the ability to examine the government work, collect and report grass roots demands, and (particularly in the latter half of the 1980s) prevent corruption. For the liberal democratic reform influencers, although their pursuit of the rule of law, mass participation, transparency, and openness were largely incompatible with the orthodox Marxist tenets, the influence of nationalist pursuit of national greatness resulted in their partial acceptance of a monopolised and centralised political power. The result of that convergence was that the orthodox Marxist reform influencers advocated many designs which more or less shared a common ground with those promulgated by the liberal democratic reform influencers, thereby securing the support of the latter. At the same time, the liberal democratic reform influencers tried to fulfil their demands by advocating certain institutional designs with partial authoritarian qualities, thereby making some of their proposals somewhat acceptable to the primary authority.

The revealing of the convergences immediately answers the question introduced in the introduction chapter: what was the reason why the NPC institutional developments in 1980s became imbalanced? In general, the reasons are threefold. First and most importantly, the intellectual convergence automatically contained the demands for specific functions and the design of corresponding institutions. For example, influencers from both intellectual 'camps' acknowledged the importance of unified and strong political approach to promote economic growth, therefore demands and designs aimed at examining the party activities were largely overlooked, while strengthening the Standing Committee was widely advocated. The second reason are the unequal 'weights' of the groups of influencers, which provides the power holders with sufficient power to stop those designs that may challenge the 'bottom line'. The third reason is the abovementioned liberal democrats' lack of knowledge about the institutional underpinnings of Western liberal democratic regimes, which rendered many proposed changes impossible.

II. The NPC's democratic future

As mentioned in the introductory chapter, the attempts at reforming politics in the 1980s are a crucial 'specimen' for understanding post-Mao Chinese politics. Similarly, the intellectual perspective that has been testified to have a greater explanatory capacity can be used to understand contemporary NPC development and to make predictions about the NPC's future development. This section aims to do so. However, it is necessary to bear in mind that as it is not the major focus of the research, analyses in this section are largely a non-systematic outline requiring further theoretical exploration and supporting empirical evidence.

1. How intellectual background changed

The following characteristics of the contemporary society-wide intellectual backgrounds are worth highlighting. Firstly, among the people outside of the political system and without even indirect contact with authority (most of whom are the grass roots masses), the numbers who believe in liberal democratic ideas has seen a dramatic increase. One of its typical expressions is the rise of awareness of the social contract. Stressing the idea that political power is given by the masses on condition of receiving an adequate repayment, such awareness directly challenges the Marxist vanguard consciousness, which claimed that the party's political power is created to enlighten and guide the masses. The most salient result of that change is the remarkable rise of taxpayer consciousness, by which the government is compared to a broken vending machine – customers keep inserting coins but get no output. Another expression of the challenge of awareness of the social contract is the rise of the awareness of the 'iron law' that political power lacking checks and balances must result in corruption, which is a direct challenge not only to the Marxist claims criticising the three-division of political power, but also, more importantly, to many constraints on deputy elections, particularly that of the electoral campaigning. Still another expression is the growing number of people acknowledging the importance of a civil society, which further stresses the need for mass sovereignty, self governance, and a private-public division. Seen in the light of these ideas, even when poorly and erratically articulated, some official slogans become questionable.[4]

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[4] An example is the above discussed slogan "uniformity between Party leadership, the masses'

Another change is the loosening of control on many academic taboos, which facilitates the fast growth of the research in areas including comparative government and politics, history of Western political development, historical and contemporary Western political thought and political philosophy. The loosening of control provides the reform participants, particularly the intellectual elite and those grass roots participants, with a broadening outlook that includes not only knowledge of how major Western political systems developed their contemporary form, but also the knowledgeable awareness of the diversity between different types of the Western systems, as well as their pros and cons. As a result, liberal democratic reform influencers nowadays normally consider certain 'principles', such as the rule of law and the basic human right protections, to be more important than, or the prerequisite to, the aim of national greatness. This change means their position in the spectrum is moving from point C_1 to A_1 (see figure 9), which refers to a development toward a greater concern with purer liberal democratic ideas. At the same time, reformers with liberal democratic ideas now have a clearer understanding of the Chinese political system. Rather than simply copying the American system, they selectively borrow the advantages of different institutional designs from the liberal democratic regimes. Instead of loudly shouting the empty slogans of democracy, the democratically inclined influencers have the capacity to explore specific designs that will not be an overtly aggressive threat to the power holders' bottom line. Such strategies include promoting the authority of the constitution and strengthening the legal system while avoiding discussing the issues, including the multi-party system and general and non-controlled state level elections, which would challenge the party's preclusive political powers.[5] Also benefiting from the reducing importance of class conflict awareness, there are the increasing numbers of NPC deputies and staff members who now openly and frankly discuss the possibility of learning from liberal democratic regimes, without worrying about being criticised as advocates of 'bourgeois liberalism' and thereby being banished from the system – the most salient example being the many arguments of Cai in the recent decade.[6]

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position of the master of the state, and the rule by law (see chapter seven)". Someone begin to question its logical paradox by asking "what to do if the masses as the master of the state decide to make a law to abandon the Party leadership? How can those conflictive things be uniformity?"

[5] See generally, Xueqin Zhu, *Sacrifice for the People's Livelihood: An Essay Collection About Political Reform (Wei sheng min li ming: Zhongguo zheng zhi ti zhi gai ge wen ji),* (Hongkong: Tian di Books Co. Ltd, 2009). Particularly the essay by Dingjian Cai "The opportunity of democratising the regime cannot be again missed (Buneng zai cuoguo minzhu de shiji)", in *Ibid*. pp. 321-43.

[6] To be a typical NPC staff member, Cai's basic claim (discussed in chapter eight) saw remarkable changes in the recent decade. Articles of this period show his greater ambition to openly and directly

The above two changes clearly show the growing popularity of the liberal democratic ideas and a decrease in the impact of narrow nationalism. However, it is necessary to emphasise that although the party allows more intellectual diversity than in the post 1980s period, its own intellectual background largely remains unchanged. The Four Basic Principles are still carefully guarded; Marxism and its several Chinese variations are still the guideline of the authority. There are no clues suggesting that the power holders wish to make any substantial changes to the preclusive and monopolised political power by pluralising the political system. The direct outcome is that the 'bottom line' of institutional developments are still carefully guarded against possible erosion. For example, in 2011, Wu, the NPCSC director, declared a so called "five rejections (wuge bugao)" in his NPCSC working report,[7] which includes the rejection of the multi-party system, pluralised intellectual ideas, a checks and balances system, bicameralism, feudalism, and privatisation.

2. Outcomes of the changes: window of opportunity or the 'last straw'

In his research of the post-Mao Chinese political reforms, Pei reveals that the core logic of Deng's reform in the 1980s was to avoid the so called 'Tocqueville paradox', namely, the most perilous moment for a bad government is when it seeks to mend its ways.[8] The CPC's strategy of avoidance was to, firstly, postpone political reforms and maintain an authoritarian system, by which authority-led economic growth gave the regime a sufficiency of legitimacy. Its second step was to gradually open the political system to mass participation and supervision. However, the severity of the masses versus authority conflict in 1989 demonstrated the failure of that attempt, while showing that reforms of the political system in the direction of democracy and rationality cannot be indefinitely postponed by economic growth.

The demand for political changes is also remarkable in the contemporary China; the urgency for change comes not only from the abovementioned great changes in the

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advocate liberal democratic ideas, rather than illustrating their 'Marxist origin'.

[7] As previously revealed, although it is named a 'working report' for the deputies' examination, it is indeed a top-down allocation and direction of the works: deputies are told of what the Central authority expected them to do and how to do it. Therefore Wu's declaration can be seen as a warning to those people trying to challenge the bottom line.

[8] Minxin Pei, *From Reform to Revolution: The Demise of Communism in China and the Soviet Union,* (Cambridge, Mass.: Harvard University Press, 1994). p. 45. The Tocqueville paradox comes from Alexis de Tocqueville, *The old Regime and the French Revolution*, (New York: Anchor books, 1983). pp. 176-77.

intellectual landscape of the people outside the isolated political system,[9] but also from the rapid progress and popularity of the communication technologies. Although the authority still bans access to many international websites including Facebook and Twitter and has created a substitute named 'Weibo (mini-blog)', controlling these new media has been a task beset with increasing difficulty. In parallel has been the exponential growth of the grass roots masses dissatisfied with the existing political system and structures. For the NPC, such dissatisfaction is illustrated by countless critiques and satires in written and pictorial forms. For example, every year, during the period of the NPC plenary session, many satirical pictures showing sleeping and yawning deputies are posted on the internet. These are normally contrasted with pictures of foreign legislatures where their deputies are in hot debate, with pictures from Taiwan in sometimes showing deputies literally, or even physically, fighting each other.[10] Shen, the abovementioned NPC deputy whose deputyship started with the first NPC in 1954 and lasts till now, was also criticised for her 'zero viscosity'. Similarly, every time when Central and Eastern China were affected by flood or drought, the NPC decision to build the Three Gorges Dam Project is castigated, because when the NPC was discussing that decision, the deputies and the masses of the whole country were informed that the project would largely eliminate those natural disasters.

The above changes can be seen as the masses, who were previously indifferent to the NPC system started to make specific functional demands, including at least (1) examination of government work (instead of examining only the activities inconsistent with laws); (2) expect deputies to be both a guardian of the interests of their own constituency and a remonstrator, petitioning against grievances. Correspondingly, the NPC is required to be an arena in which different preferences and interests can debate and generate compromises. However, that change may not be automatically a desirable thing; although lacking empirical, particularly the quantitative, evidence, a default view is that the masses in contemporary China still focus on the 'low politics'. With many of them even now still knowing very little about the NPC, such individuals do not know what the Constitution states about the NPC post and role in the whole political system,

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[9] For the importance of that change, see Wuchang Zhang, *The Future of China (Zhongguo de qiantu)*, (Hongkong: Huaqianshu Press Co.Ltd, 2002). It is worth mention that, although specific data is currently not available, the number of people in this type is steadily increasing. It is a remarkable contrast to the situation in the 1980s when grass roots reform activists constituted only by a small number of citizens and university students in major cities.

[10] Democracy in Taiwan, in Chinese official propaganda, is normally a typical example of how democracy results in social and political unrest. Seen fighting in legislature positively is a strong sign of the masses' changes of intellectual idea.

nor how the institutions should be changed to match their demands. It is a real danger to the regime – and could be even more dangerous than the situation in the 1980s when the masses focusing on political reform similarly lacked an understanding of how the institution should be reformed, but did not challenge the legitimacy of the authorities and were limited in their demands for change.

For liberal democratic reformers, various hindrances and difficulties that resulted in passivity toward NPC reforms in the 1980s, which were confirmed by this research, still remain. A salient example are the pro-democracy students; they still focus on the election of deputies to the LPC, while the strategies they have adopted to fight against manipulations of the candidate nominating process are even more passive than in the 1980s. [11] However, positive signs are also observable, such as the effect of the abovementioned growing understanding of Western political systems that made liberal democratic reformers more rational. Another positive sign is the OMIE's lesser concern to adhere Marxist tenets in designing or advocating new institutions. [12]

Nowadays, the major hindrance to the institutional changes within the NPC still comes from the power holders who are not only trying to resist any intentions to abandon or change orthodox Marxism, but also have sufficiently robust powers to do so. [13] As this research shows, a political system of checks and balances will not be established unless the orthodox Marxist intellectual background is substantially changed. [14] Therefore, it is not a surprise to see that the major flaws of the PCs in the 1980s are still observable

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[11] For example, according to a widely 'twittered' mini-blog article, in the 2011 LPC deputy elections, student voters at Fudan University constituency refused to vote for any candidates in the ballot ticket; instead, they wrote on it the names of several movie stars. In doing so, they passively expressed their dissatisfaction at the manipulated election: they know much about the movie stars than those 'selected' candidates. See, for example, http://club.china.com/data/thread/1011/2734/13/49/7_1.html (accessed 18-11-2012). It is worth highlighting that there was no active expression of the dissatisfaction, including the demonstration or other more mild ways that happened in the 1980s.

[12] In the interviewing with a prestigious scholar in the Central Party School, the interviewee said angrily about NPCSC director Wu's 'five rejections': "How tough is Mr. Wu! This saying is not to help the party, he is poisoning the party!" Interview 27-11-2011.

[13] A typical example is that many scholars with profound understandings of how Chinese legislatures should be improved still try to avoid challenging the bottom line. They either avoid discussing the related topic that would irritate the authority or mutate those clear ideas or terminologies into very ambiguous and uncommon phrases. See, for example, (ed.) Keping Yu, *Democracy and the Rule of Law in China,* (Leiden; Boston: Brill, 2010). Particularly Yu Keping's article "Towards an incremental democracy and governance: Chinese theories and assessment criteria" in Ibid, pp. 3-33. Yu is well-known for advocating the 'incremental democracy' concept. This ambiguous concept is arguably the result of the deliberate avoidance of challenging the bottom line.

[14] An example can be seen in Jon Bond and Diqing Lou, "The State's Rubber Stamp or Independent Agent: A Study on the Development of Municipal People's Congress in China," in *Toward Better Governance in China: An Unconventional Pathway of Political Reform*, ed. Baogang Guo and Dennis Hickey, (Lanham, Md.: Lexington Books, 2010). pp. 71-88.

today, evident in that (1) the party director is simultaneously the director of the People's Congress became a convention in the LPC; (2) party committees control the veto and pre-consent powers in both legislation and decision making; (3) allocating seats is still commonplace.[15]

In conclusion, the NPC's democratic future, seen from the intellectual perspective, can hardly be optimistic because the intellectual convergence that supported the institutional changes in the 1980s has been shrinking. As previously noted, the Marxist power holders have essentially stuck to the same position from the 1980s to the present. However, over the same period those with liberal democratic ideas have moved further away from the Marxist power holders as their conviction about nationalism has waned. This highlights the possibility that NPC reforms may still be postponed until the emergence of a substantive political crisis.[16] However, the window of opportunity can be opened at any time if any new intellectual convergence is created.

III. Research contributions, reflections, and further research directions

1. Research contributions

The primary contribution of this research is its new perspective. Its resulting intellectual-institutional framework offers scholars of Chinese legislature a new approach to the understanding of the NPC development from the viewpoints and consciousness of the participants, which uniquely differentiates it from pioneering research focusing primarily on the institution alone. Furthermore, the empirical analysis adds new knowledge and understanding of the NPC development to the current literature by a) studying those actors (e.g. intellectual elite and wall-posters), whose linkages to the NPC institutional development have not been subject to systematic

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[15]Cabestan, "More Power to the People's Congresses?" Oscar Almen, *Authoritarianism Constrained: The Role of Local People's Congress in China,* (PhD Thesis: Göteborgs universitet, 2005). pp. 71-72, 64; The most telling primary evidence is the extremely fixed NPC deputyship professional and ethnic composition, comparing the statistics of the Eighth NPC since 1993, Ninth NPC since 1998 and the Tenth NPC since 2003. Liu and Cheng, *Encyclopedia of Institution-Related Works of the People's Congress 1949-1998.* pp.1420-21; Cai, *Institution of the Chinese People's Congress.* p.220.
[16] See Zehou Li and Zaifu Liu, *Farewell to the Revolutions: A Retrospect to the Twentieth Century China (Gaobie geming: huiwang ershi shiji Zhongguo),* (Hongkong: Tiandi Books 1995). p. 23. Party Director Hu's recent Report made on the Eighteenth Party Congress claimed that the reform should "neither go back to the tragic past nor go astray", which again confirmed that the power holders have no willingness to change the orthodox Marxist tenets.

analysis; and b) examining new sources of data, including those established through interviews with NPC deputies in the 1980s and surveying the compilation of the wall-posters' underground publications.

2. Explanatory capacity of the framework

Interpreting the institutional development by introducing a new theoretical framework is a substantial challenge, with the greatest difficulty being to evaluate its explanatory capacity. Intellectual backgrounds of the reform influencers were a significant factor in the 1980s as the Communist regime was and is under control of an ideologically oriented ruling party that automatically aims to maintain its ideological hegemony and contain competitors, thereby making consciousness conflict a crucial aspect of political life. That conflict was particularly important and marked in the 1980s, the initial decade of the post-Mao period in which the CPC's unified and tightly controlled ideology for the first time faced the challenges of numerous new ideas. Another factor increasing the explanatory capacity of the intellectual perspective is the non-significance of regional differences in the 1980s: the dominance of the planned economy discouraged any increases in regional and professional differences; diversity of individual incomes was not significant; opportunities to discover new intellectual ideas, although significantly higher in the major cities, had showed no marked difference between those cities. Thereby, for the reform influencers in the 1980s, geographical location was not a notable intervening variable that could have resulted in considerable differences in functional demands and institutional designs. For example, although the first wall-poster appeared in Beijing, many large cities followed suit. Though the wall-poster articles appeared in other cities to some extent had a greater focus on appeals against personal grievances, overall the demands for changes and reforms were almost the same as those in Beijing. The student demonstrations appealing against manipulation of the deputy elections not only occurred in Beijing but also in Hunan and Anhui provinces – two inland provinces that had limited economic development. Studies of the staff members and deputies in chapter eight did not detect any substantive regional difference resulting from uneven social and economic development.[17]

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[17] An example is the NPCSC scrutiny stage of the draft Air Pollution Prevention Law. See Song, *A Recollection of Engagement in the Legislation Works*.

However, with the growing importance of the market economy and the further loosening of economic planning and similar social controls, regional diversity as substantial social and economic imbalances between them has been a powerful factor, having a similar importance with intellectual factors, in shaping the people's functional demands and institutional designs.[18] Generally speaking, people in a social and economic advanced region may have greater demands for the NPC to have certain function demands and therefore advocates for some institutional changes. Still waiting for specific empirical data, this section only cites two examples of that effect. First is the strong correlation between the numbers of 'independent candidates'[19] and the degree of economic development within a constituency. According to He's quantitative study of the 2011 LPC elections, only eight provinces saw no independent candidates, six of which are the inland provinces in the western China where economic development ranked last. The top three provinces with the largest number of independent candidates were Guangdong (22), Beijing (17), and Zhejiang (11), which are either in the east coastal regions where social and economic developments ranked top in the country, or the capital city.[20] The second example is the correlation between the economic development and the number of PMBs introduced, which further substantiates the strong linkage between economic development and deputies' activities and commitment to participation.

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[18] Cheng Li, "Diversification of Chinese Entrepreneurs and Cultural Pluralism in the Reform Era," in *Chinese Political Culture, 1989-2000*, ed. Shiping Hua, (Armonk, N.Y.: M.E. Sharpe, 2001).

[19] 'Independent candidate' refers to those candidates whose candidateship is obtained not by the nomination of any political party or organisations but by obtaining enough endorsements signed by voters. As only the bottom two levels of the PCs are directly elected, 'independent candidates' are only seen in grassroots elections. Needless to say, this kind of candidate is a direct challenge to the ruling Party's monopolised control of the political power; candidates' strong sense of participating the politics and independence normally lead to their preference of the representative function with a bottom-up direction. The candidates of pro-democracy students that were discussed in the last chapter are indeed the very early and tentative form of independent candidate.

[20] Junzhi He and Leming Liu, "New Characteristics of the Independent Candidates (gongmin zizhu canxuan renda daibiao guocheng zhong de xin tezheng) " *Journal of Shanghai Administration Institute,* 4, no. 65 (2012)

Figure 15: *Relationship between regional (Provincial) economic development and deputies' PMBs introduced (an example from the 2003 NPC plenary session)*
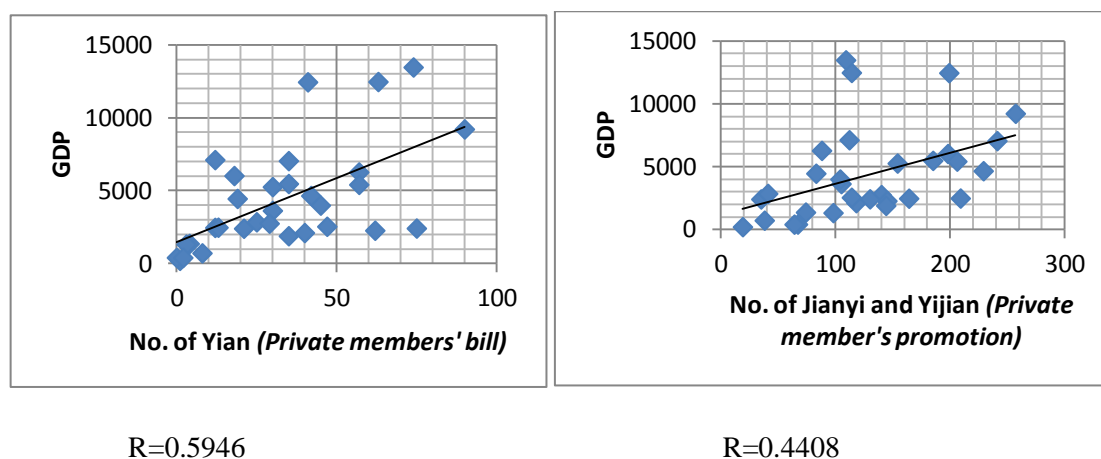
R=0.5946   R=0.4408

Source: NPCSC General Office Liaison Office: *Compilation of the Private Member's Bills (and Proposals) of the First Plenary Session of the Tenth NPC* (Beijing: Democracy and legal Press, 2003). Statistics of regional GDP is based on "China Statistic Yearbook (Online database)", from the National Bureau of Statistic Webpage: http://www.stats.gov.cn/tjsj/ndsj/yearbook2003_c.rar (Accessed 4-11-2012).

In general, the rise of social and economic diversification after the 1980s has added additional intervening variables to the intellectual-institutional linkages, which makes an application of the intellectual perspective more challenging. However, this intellectual perspective still has a strong explanatory capacity in the study of the LPC because focusing on a local institution should substantially reduce the impact of regional diversity. Similarly, it also maintains its explanatory capacity in a study of the power holders and NPC staff members, and perhaps also the intellectual elite, whose regional diversity is not particularly evident.

3. New methodologies

Largely lacking quantitative data, this research is mainly based on qualitative evidence. The findings of this qualitative research are more or less weakened by the lack of historical recordings (see methodological chapter). Taking the intellectual perspective, further research focusing on contemporary Chinese NPC development would have an opportunity to overcome the methodological flaws but it may also face new challenges.

The research, focusing on contemporary institution, will be largely free of the need to rely on historical evidence. Meanwhile, official statistics are currently more freely available nowadays than in the 1980s. Both of which make it possible for future research to develop more effective quantitative analyses, and therefore make the research findings more convincing.

However, new methodological challenges may occur as well. The most important challenge may come from the abovementioned contemporary Chinese society's great complexity and diversity, which makes the sampling stage of the quantitative analysis very challenging. Extensive sample sizes did not exist in the 1980s, when the majority of the masses, except for the wall-posters and the pro-democracy students, had no clearly articulated links to demonstrate their concerns with related issues. However, as an example of this kind of challenge, it is now necessary to observe the masses' intellectual ideas and their attitudes toward NPC functions and institutions by surveying 'mini-blog' articles: although the exact number varies, it is believed that the mini-blog users in China now exceed two hundred million.[21] Such a great sample size was never seen in the 1980s when the majority of the masses, except the wall-posters and the pro-democracy students, had no clear concern with related issues. Such a challenge requires borrowing of methodologies from other areas of social science research, such as the attitudinal survey methods used in cybersociological studies. Additionally, interviewing is expected to be more difficult as interviewees will be present incumbents rather than those having retired, which will demand a subtle and very carefully designed list of interview questions.

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[21] Qi Xin: "Mini-blog users reaches 2.5 hundred million, owned by nearly half of the internet users (weibo yonghu da 2.5 yi, jin banshu wangmin shiyong)", http://tech.ifeng.com/internet/detail_2012_01/16/12006555_0.shtml (accessed 22-11-2012).

Appendix I: Major Academic translations published in the 1980s

Note: There were several series of the translations in the 1980s published by different publishers. This list chooses two cases – the academic translation series of the Commercial Press, and the 'going to the future (Zouxiang Weilai)' series published by Sichuan People's Publisher. Both two series were the most popular and the most widely influential in the 1980s.

The Academic Translation Series

	[Edition] Book Title	Author
Philosophical	[1981] Phänomenologie des Geistes	Friedrich Hegel
	[1981] Wissenschaft der Logik,	Friedrich Hegel
	[1981] Lectures on the Philosophy of History	Friedrich Hegel
	[1981] Lectures on Aesthetics	Friedrich Hegel
	[1981] The Origin of Species	Charles Darwin
	[1981] Pragmatism: A New Name for Some Old Ways of Thinking	William James
	[1981] A History of Western Philosophy (1963)*	Bertrand Russell
	[1981] Annals	Tacitus
	[1982] A treaties on human nature	David Hume
	[1982] Elements of the Philosophy of Right (1961)	Friedrich Hegel
	[1982] History and Geography	
	[1982] Florentine Histories	Niccolò Machiavelli
	[1985] Critique of Judgement	Emmanuel Kant
	[1985] The Essence of Christianity	Ludwig Feuerbach
	[1985] Tractatus Logico-Philosophicus,	Ludwig Wittgenstein
	[1985] History and Geography	
	[1985] History of the Peloponnesian War (1960)	Thucydides
	[1985] Lectures on Human Happiness	John Gray
	[1986] Republic	Plato
	[1986] Introduction to Psychoanalysis	Sigmund Freud
	[1986] History Of The English Revolution Of 1640	François Guizot
	[1989] Reconstruction in philosophy	John Dewey
	[1989] Dialogues Concerning Natural Religion (1962)	David Hume
	[1989] The Institutes of Justinian	Justinianus
	[1989] Areopagitica: A speech of Mr. John Milton for the liberty of unlicensed printing to the Parliament of England （1965）	John Milton
Social-Political	[1981] Politics (1965)	Aristotle
	[1981] Oceania (1963)	James Harrington
	[1981] Second treaties of government (1964)	John Locke
	[1981] Emile	Jean-Jacques Rousseau
	[1981] The Napoleonic Code (the Code civil des Français)	Napoleon Bonaparte
	[1982] Utopia	Tomas Moore
	[1982] The City of the Sun (1960)	Giovanni Campanella
	[1982] Select writings of Winstanley (1965)	Gerrard Winstanley
	[1982] Enquiry concerning Political Justice, and its Influence on General Virtue and Happiness	William Godwin
	[1982] Select writings of Aquinas (1963)	Thomas Aquinas
	[1982] An Englishman His Defence of the People of England (1958)	John Milton
	[1982] Theological-Political Treatise (1963)	Baruch Spinoza
	[1982] First treaties of government	John Locke
	[1982] The spirit of the laws (1913, 1961)	Baron de Montesquieu
	[1982] Social Contract	Jean-Jacques Rousseau

[1982] Discourse on the Origin and Basis of Inequality Among Men	Jean-Jacques Rousseau
[1982] Select writings of Shelley's political discourse	Percy Bysshe Shelley
[1982] Select writings of Napoleon	Napoleon Bonaparte
[1982] On liberty (1903)	John Mill
[1982] Select writing of Paine	Tomas Paine
[1982] Federalist paper	Hamilton, Jay, Madison
[1982] What is Property? An Inquiry into the Principle of Right and of Government (1963)	Pierre-Joseph Proudhon
[1985] Ancient Law	Sumner Maine
[1985] Considerations on Representative Government	John Stuart Mill
[1986] The Prince	Niccolò Machiavelli
[1986] Leviathan	Thomas Hobbes
[------]Select writing of Robespierre On revolutionary legal system and trail（1965）	Maximilien Robespierre
[1986]Conservatism	Lord Cecil

This list is made on the basis of the publisher's data base at http://www.cp.com.cn.

 *) The date in the brackets indicates its earliest edition; some of the date goes prior than 1949, which indicates its introduction before the Communist regime - Those writings are the signs of the first liberal democratic importation that happened before the establishment of the Communist regime (mentioned in Chapter 4).

The 'Going to the Future' Series

1984	The Limits to Growth: a Report for the Club of ROME's Project on the Predicament of Mankind	Donella H. Meadows et.al
	Gödel, Escher, Bach: An Eternal Golden Braid	Douglas R. Hofstadter
1985	Becoming Modern: Individual Change in Six Developing Countries	Alex Inkeles
	The Ultimate Resource	Julian Simon
	Sociobiology: The New Synthesis	Edward Osborne Wilson
1986	Systems Concepts	Ed. Ralph Miles, Jr.
	A General Selection from the Works of Sigmund Freud	Sigmund Freud; ed.John Rickman
	Science, Technology and Society in Seventeenth Century England	Robert K. Merton
	The Protestant Ethic and the Apirit of Capitalism	Max Webber
	Liang Ch'i-ch'ao and the mind of modern China.	Joseph R. Levenson
	Growth, Shortage, and Efficiency: a Macro-dynamic Model of the Socialist Economy	János Kornai
1987	Cliometrics	Ivan Kovalćhenk
	Philosophy and Linguistic Analysis	M J Charlesworth
	The Practice of Social Research	Earl R Babbie
	Social Choice and Individual Values	Kenneth Joseph Arrow
	The Two Cultures and the Scientific Revolution	C. P. Snow
	Max Weber	Frank Parkin
1988	The Dynamics of Modernization: a Study in Comparative History	Cyril Edwin Black
	The Scientist's Role in Society; a Comparative study	Joseph Ben-David
	Equality and Efficiency, the Big Trade-off	Arthur M Okun

Note: This series of publications were consisted of translated academic writings and books written by Chinese scholars. This list only shows the translated writings.

Appendix II. List of interview questions and interviewees

Deputies' basic understanding of the NPC institution

1. Did you know the Constitution of China gives the NPC the role of the highest organ of state power? Could you please tell me something about your understanding of the "highest organ of state power"? Did you feel such 'supremacy' when you served in the NPC?

2. To what extent did you know the NPC institutions before becoming a NPC deputy? Were you given any training after elected? If yes, what did you learn?

3. Someone believes that the size of the NPC should be larger in order to secure the NPC's high level of representativeness; someone believes the size should be reduced to facilitate legislative debate. Which opinion do you agree with? Is there any solution to settle this conflict? (If the interviewee prefers remaining the large size, then ask him to what extent could a large conference can effectively engage in the decision making; if the interviewee prefers a small legislature, then ask him how to guarantee that such a large population can be represented)

4. What is the most significant difference between the NPC and the CPPCC? Did you notice the debate in the 1980s that the CPPCC should be developed into an "upper house"? what was your opinion?

The Pragmatic attitude of the deputies

1. In legislative studies there has been a widely noticed trend that a strong legislature, although secures democracy, might reduce executive efficiency, therefore legislative development since the 20th century had a clear characteristic of limiting the legislative power and moving them to the executives. Between democracy and efficiency, which one do you think is more important? When you were serving in the NPC in the 1980s, did you believe that too much supervisory activities may reduce government efficiency and thus hamper economic growth?

2. Do you think that a well-designed political system (Zhengzhi zhidu) is the key factor for the success of the Western countries? Do you think China must follow their institutional designs in order to fulfil the national greatness?

3. Have you ever noticed that China had made several unsuccessful attempts at introducing Western legislative system during the republican period? If so, did you realise that Western legislative system might not be suitable for China through those failures?

The deputies' understanding of their role

1. The CPC always claims its control over the NPC; meanwhile, according to the Constitution, it is an agency, by which the people can be 'the masters of the state', do you think if there are any conflicts between these statements?

2. Have you ever faced the situation when you served in the NPC that in a vote your preference was different from the local people in your region, but you believed that your decision was

better? Under this condition, would you insist on your decision or change your opinions according to others?

3. Which group of people did you think you were representing when you were a NPC deputy in the 1980s? A whole country, your province (equals to the constituency), your profession, or certain class?

4. Which side would you choose to guard if the region/profession/class (depend of the answer of the above question) you represent has a different interest with the interest of the whole country?

5. When the making of a new policy damaged the interest of the people in your constituency, you chose to persuade local citizens or to fight for the local interest?

6. Have you ever tried to petition for any grass roots masses' grievance? If so, which institution did you choose to contact? Local people's congress, local government, or local party committee?

Deputies' understanding of, and attitude toward, foreign legislative institutional designs

1. In the 1980s did you know anything about institutional principles of any Western legislature, such as the American checks and balances principle?

2. Official rhetoric stresses that Chinese legislature should never follow the institutional designs of the Western bourgeois legislatures; do you understand the specific meaning of the 'Western bourgeois legislatures?' Do you notice any difference between the British Parliament system and the American Congress system?

3. Marxist legislative theory has a classic and basic claim that the Western bourgeois legislatures are merely a trick, for every few years the voters vote to merely choose their oppressors. This claim was brought forward in the 19th century; Lenin in the early 20th century also highlighted that. Since its debut, almost a century has passed; within this period, Western Capitalist counties undergone huge changes; for example, general elections had been carried out in Britain after several Parliamentary reforms; vote-buying and other corruptions that were popular in Marx's age were also almost eliminated. Have you heard any of such changes? If so, where did you get that information?

Deputies' understanding of the law-making function

1. To what extent did you agree that strengthening the law-making function was the prior task in the institutional development of the 1980s NPC, compared with other functions?

2. Which kind of advice did you normally deliver during the reading and debating stage (shenyi) for bills and decisions? (To confirm the findings of many secondary sources that deputies almost focused only on making literal changes)

3. Was there any draft law vetoed in the 1980s? If not, what possible reasons do you think that might lead to such result?

4. Did you ever think of, or attempt at, improving the NPC law-making power in the 1980s?

5. Did you feel that the NPCSC was given too much power in the process of law-making?

Deputies' understanding of the supervisory function

1. In the 1980s, were you satisfied with the support provided by the NPC for fulfilling the supervision work? If not, which aspect was insufficient? What might be reasons that hampered the development of supervision work?

2. Besides examining the working report of the Central Government, the Supreme Court, and the Supreme Procuratorate, in the 1980s did you know and used other institutional approaches to oversee political power, such as taking a local inspection visit?

3. Did you believe that the NPC without enough supervisory power was an important reason of the CR?

4. Did you ever try to be an 'examiner' of the authority by introducing a private member's motions or proposals? If so, did you think your motion was seriously dealt with? Were you satisfied by the feedback? If not, what did you do?

5. Based on your experience in the NPC, what was the most difficult thing in strengthening the NPC's supervisory function?

6. There is a point of view that the deputies are given too short time to scrutinise the Government Work Report, as well as the work reports of other institutions. For this reason, they do not have enough time to examine any specific issues shown in the report, which resulted in the NPC supervisory function largely formalistic one. What do you think about such opinion?

Deputies' understanding of the representative function

1. As a NPC deputy did you appeal to the higher authorities for any specific demands of local people? If so, to which authority did you appear? The government, the Local People's Congress, or other?

2. How did you 'convey' the contents of the conference (Chuanda Huiyi Jingshen) to the people in your constituency?

3. Which attitude or mood (Xintai) did you take when scrutinising Government Work Report and other working reports? Trying to understand or 'grasp' the meaning of the authority and then conveying them to the locality? Or *de facto* examining the reports?

Unstructured question

1. Could you please recall some impressive incidents or events related to your role as a NPC deputy in the 1980s?

Part B. Interview Questions for Non-deputy Interviewees

Basic understanding of the NPC institution

1. As an activist focusing on political reform in the 1980s, to what extent did you focus on the NPC reform? What was your understanding of the role of the NPC in the Chinese political system?

2. In the 1980s did you know that the Constitution of China stated the NPC's status of the highest organ of state power? Could you please tell me something about your understanding of that role?

3. Someone believes that the size of the NPC should be larger in order to secure the NPC's high level of representativeness; someone believes the size should be reduced to facilitate legislative debate. Which opinion do you agree with? Is there any solution to settle this conflict?

The Pragmatic attitude

1. In legislative studies there has been a widely noticed trend that a strong legislature, although secures democracy, might reduce executive efficiency, therefore legislative development since the 20th century had a clear characteristic of limiting the legislative power and moving them to the executives. Between democracy and efficiency, which one do you think is more important?

2. Someone claims that traditional Chinese political thought lacked concern with democracy, and the masses had an inclination to obey political power. In the 1980s did you noticed the impact of this tradition? If so, did you think that tradition conflicted with modern representative democracy? If so, in what way did you think the conflict can be addressed?

3. In reforming the political system, do you think a strong and centralised executive power and a weak legislature would result in an executive power without sufficient constraint?

4. Do you think that the well-designed institution of politics (Zhengzhi zhidu) is the key factor for the success of the Western countries? If not, what is the role of the institutional designs? If so, do you think China must learn something from the designs?

5. Have you ever noticed that China had made several unsuccessful attempts at introducing Western legislative system during the republican period? If so, did that history make you realise that Western legislative system might not be suitable for China?

Reforming the LPC or the NPC?

1. If you concerned with the legislative reform in the 1980s, which level was your primary focus? The LPC or the NPC? I mentioned that, because of the promulgation of the Electoral Law in 1979, there were many campaigns and demonstrations regarding the local PC deputy elections during the period of 1978-1982. Do you agree with the claim that the primary concern of the pro-democracy activists was the Local People's Congress? What was your opinion about the NPC reform?

The importation of the new intellectual thought in the 1980s

1. In the 1980s from what channel did you get information about the Western legislative system? Which Western institutional designs and theories was your primary concern? What were their impacts on your decision of the way of political reforms?

2. The authority always claims that Chinese legislative reform should never learn from Western legislative institutional designs. In the 1980s did you notice that there were huge differences between two typical models of foreign legislative system – the U.S. Congress system and the British Parliamentary system? If so, can you list some differences?

3. Marxist legislative theory has a classic and basic claim that the Western bourgeois legislatures are merely a trick, for every few years the voters vote to merely choose their oppressors. This claim was brought forward in the 19th century; Lenin in the early 20th century also highlighted that. Since its debut, almost one century has passed; within this period, Western capitalist counties undergone huge changes; for example, general elections had been carried out in Britain after several Parliamentary reforms; vote-buying and other corruptions that were popular in Marx's age were also almost eliminated. Have you heard any of such changes? If so, where did you get that information?

Demands for specific NPC functions (this section requires interviewees to circle the prospected changes they thought to be crucial)

Decision Making:

a. The NPC will have more power to initiate draft bills.

b. The NPC will make substantial amendments on bills and decisions in the debating and examining stage.

c. The NPC will have power to postpone or reject bills or decisions failing to satisfy the deputies.

Representation:

a. Deputies will become a conveyer of the voice of the masses, and become an effective path, by which local demands can have impact on the central decision making.

b. Private Members' Bills will actively response to the demand of the local people, and the bills will be treated more seriously in the political system.

Supervision:

a. The NPC will be more active and effective in examining the processes and outcomes of the executives.

b. The NPC will have enough authority to prevent the re-emergence of any dictators or oligarchic groups that may destroy the existing political system.

Legitimation:

a. The NPC will not only legitimising policies, but also provide the whole regime with legitimacy by the operation of a well designed, transparent, democratic, and accessible institution.

Unstructured open question

This part is a very crucial component of the interviews with this group of interviewees (particularly for those interviewees selected for being a key witness for certain reforms in the 1980s). The questions are designed individually according to the specific social background of the interviewees.

Part C. List of interviews

Note: further information, such as the interviewee name and their exact period of study or working, cannot be offered for the reason of avoid any prosecution addressed by related agents that may obtain this thesis.

Type	Interviewee Role during the 1980s	Contemporary Role or Position	Key Characteristics	Date of Interview	Venue
Reform Activist	-University undergraduate student -Major in Politics	- University associate professor of politics	Actively involved into the 1980s Democratic movements, Esp. the June fourth Incidence	27-09-2011	Shanghai
Reform Activist	- University Professor of history	-University Professor of history	Partially actively involved into the 1980s Democratic movements	29-09-2011	Shanghai
Reform Activist	-University undergraduate Student -Major in Politics	-University associate professor of politics		10-10-2011	Nanchang
Reform Activist	-University undergraduate student -Major in Philosophy	-University Professor of public administration	Being an extremely active member in the 1980s Democratic movements; Made public speech on the city centre square during the June fourth incidence	11-10-2011	Nanchang
PC Staff member	-Member of J Province PC Standing Committee -Chairman of Legislative Affairs Commission, J Province PC	Retired	Founder of the J Province PC Standing Committee, the first Chairman of Legislative Affairs Commission who participated and witnessed the making of most legislative related institutional designs	18-10-2011	Nanchang
NPC Deputy	-NPC Deputy 1982-1987 -Worker in a textile mill	Retired	Model worker; Orphan, had a very hard life before 1949; adopted and cultivated by local government; became a model in the official propaganda appreciating the merit of the Communist 'new China'.	21-10-2011	Nanchang
NPC Deputy	-NPC deputy 1982-2002 -University professor, vice chancellor - Vice Provincial Governor 1993-1999	Retired	-Being selected for multi-representativeness: Intellectual deputy, woman deputy, non-CPC deputy.	26-10-2011	Nanchang

NPC Deputy	-NPC deputy 1975-1988 -NPC Standing Committee deputy -Worker in a textile mill	Retired	Model worker	27-10-2011	Jiujiang
NPC Deputy	-NPC deputy 1987-1997 -University Professor in Chinese Literature	Retired	-Witnessed the institutional crisis of the 1989 -Being selected to represent the higher education institutions	31-10-2011	Nanchang
NPC Deputy	-NPC deputy 1988-1998 -Well-known private entrepreneur	-Provincial Political Consultative Conference deputy -Well-known private entrepreneur		02-11-2011	Nanchang
Key Witness to certain reforms	-University Lecturer	Professor of Law, Chairman of Administrative Law and Administrative Litigation Law Studies Association	Directly involved in the law-making process as a law expert since the 1980s. Leading expert of administrative related laws.	03-11-2011	Nanchang
PC Staff member	-Staff member in J province People's Congress Legislative Affairs Committee	Chairman of J province People's Congress Legislative Affairs Committee.	Witnessed the development of People's Congress's law-making function and related institutional development	04-11-2011	Nanchang
NPC Deputy	-NPC deputy 1983-1993 - Vice Provincial Governor in the 1980s	Retired	Typical senior governmental officer deputy	07-11-2011	Nanchang
Key Witness to certain reforms	Secretary of two top CPC power holders	Vice director, Chinese Academy of Social Science	Has a profound understanding of the core power holders' attitude toward political reform	25-11-2011	Beijing
Key Witness to certain reforms	*Xinhua Monthly* Chief Editor	Retired	Has a profound understanding of the authority's 'bottom line' – to what extent did the authority allow the spread of the liberal democratic ideas.	25-11-2011	Beijing
Key Witness to certain reforms	Editor and columnist of a pro-democracy weekly column in the *Worker's Daily*	Professor in the Central party School	Typical NILDIE pro-democracy reformer: stay in the 'border' between the Authority and Anti-establishment. Advocating for an increase to democracy without irritating the authority.	27-11-2011	Beijing
NPC Deputy	-NPC deputy 1983-1993 -Secondary school lecturer	Vice director, Provincial People's Political Consultative Conference	Model worker	31-01-2012	Nanchang

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