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## **Modes of Executive-Legislative Relations in the Chinese legislative process**

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First Draft for Discussion and Comments

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*The interaction between the NPC and the executive in the Chinese legislative process is noteworthy. In this article, three modes of executive-legislative relations in the Chinese legislative process will be discussed. The first is the respective autonomy model. This model focuses on the relations between the executive and the legislature in the legislative process described in the Constitution and relevant laws. The second is the cooperative coexistence model. In China, the executive and legislature both occupy stable and effective positions in the legislative process under the influence of the CCP. The third is the competing model. The legislature claims its supreme position to exercise the legislative power, challenging the claims of the executive to impinge on its capacity to determine the laws. The executive asserts its competence to influence, even dominate the legislative process. By following the discussion of the three modes, a case study of the amendment of the Budget Law will be explored in details to demonstrate the modes of executive-legislative relations in the Chinese legislative process in reality.*

*Key words: National People's Congress; modes; legislative process; executive-legislative relation.*

Since the 20<sup>th</sup> century, no matter what kind of regime emerged, 'the decline of Parliament'<sup>1</sup> has been noted: the state power structure that is led by the parliament and the 'separation of powers' mode has shifted to an administration-led mode. As is shown in legislation, the parliament's legislative power is being eroded, the content and time of parliamentary legislation are increasingly being swayed by the executive, and delegated legislation has appeared in large numbers. Some scholars have observed the role played by the state executive of most countries in the legislative process. It has been concluded that "the executive's bills are absolutely prior to the MPs' bills, and when the executive's bills reached the legislature, they were almost finalised. It is very hard for the Parliament to make any significant modifications."<sup>2</sup> Hence, it seems that the Parliament is in a very unfavourable position in the legislative process, while the executive has an overwhelming advantage.

In China, although the constitutional structure has for a long time been characterised by the centralised leadership of the Communist Party of China as the centre, decisions made

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<sup>1</sup> James Bryce, "The Decline of Legislatures", in *Modern Democracies*, (London: Macmillan, 1921). Chapter LVIII.

<sup>2</sup> Zhou, "50 Years of China's Legislation (Zhongguo Lifa 50 Nian)". p. 35.

by the Party and implemented by the executive, since the 5<sup>th</sup> NPC<sup>3</sup> in 1978, the PC system has increasingly strengthened its autonomy in legislation. The NPC's involvement in the legislative process is becoming earlier, and its deliberation on bills is becoming more stringent, in aspects such as the number of the deliberations and the average deliberation length on each bill.<sup>4</sup> In contrast, the Party's control over the legislative process has gradually become indirect, and is exercised mainly through its 'ideological leadership' or 'leadership in principle'.

However, the NPC's legislation is still characterised by law instrumentalism because it "must be around the centre and serve the overall circumstance", meaning it must be related to and follow the Party's policy; by contrast, in the legislative process, the executive still has an advantage in legislative planning and legislative drafting, although the advantage is narrowing. Overall, compared to the executive, the proportion of laws drafted by the NPC is lower, and the bills drafted by the executive are subject to a shorter period of deliberation.<sup>5</sup> In addition, both at the national and sub-national levels, although the PC system has taken various forms of 'legislation with door opening' and public participation in the past decade, the effects do not seem ideal. The actual impact of the public on legislation is not obvious. Moreover, the bills initiated by the deputies have never been placed on the legislative agenda. It is undeniable that, from the perspective of historical institutionalism, the NPC has experienced ups and downs. Thus, three models will be put forward to generalise executive-legislative relations in the Chinese legislative process.

### **1. Respective autonomy mode**

The first is the respective autonomy model. This model focuses on the relations between the executive and the legislature in the legislative process described on paper. According to the stipulations on legislation in the Constitution and laws, it appears that the NPC and the executive are discrete. The NPC exists as the legislation-making body, ensuring that

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<sup>3</sup> The 5th session of the NPC was the first session after the Cultural Revolution. From that point, the NPC started to be on the track.

<sup>4</sup> Chen, Wenbo, "Is the label 'minimal legislature' still appropriate? The role of the National People's Congress in China's political system", *Journal of Legislative Studies*, 2016(3).

<sup>5</sup> Ibid.

the Constitution and laws are formulated and determined. The executive exists as the implementation body, ensuring that the laws made by the legislature are implemented.

### **1.1. The legislative power of the PC system**

Since 1949, China has promulgated four constitutions in 1954, 1975, 1978, and 1982. In each constitution, the distribution of legislative power is essential to map the structure of the state powers. Apart from the constitutions, the *Legislation Law of the People's Republic of China* enacted in 2000 and the *Organic Law of the People's Republic of China on the Local People's Congresses and the Local People's Governments* made in 1979 are the other two laws stipulating the legislative power in China. In this part, the distribution of legislative power in China, on the basis of legal text, will be examined.

#### **1.1.1. Legislative power of the NPC and the NPCSC**

In terms of legislative power at the national level, China's first constitution, the 1954 Constitution, which was passed at the first meeting of the 1<sup>st</sup> NPC, on 20<sup>th</sup> of September, 1954, established a highly centralised system for the exercise of legislative power. Article 22 of the 1954 Constitution stipulated, "The National People's Congress is the sole organ exercising the legislative power of the state"; Article 27 stated, "The National People's Congress exercises the functions and powers to amend the Constitution and to make laws..."; Article 31 read: "The Standing Committee of the National People's Congress exercises the functions and powers to make decrees, to interpret laws, to annul decisions and orders of the State Council which contravene the Constitution, laws or decrees, and to alter or annul inappropriate decisions of the organs of state power of provinces, autonomous regions, and cities directly under the central authority."<sup>6</sup> In the subsequent constitutions, Article 17 of the 1975 Constitution and Article 22 of the 1978 Constitution also stipulated that the main function of the NPC is to amend the Constitution and make laws.<sup>7</sup>

More importantly, in the current Constitution, the 1982 Constitution, Article 58 stipulates explicitly that the NPC and the NPCSC exercise legislative power. According to Article 62 of the Constitution, the legislative power of the NPC plenary session is twofold: one

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<sup>6</sup> See the 1954 Constitution in 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 1949-1990*), (Beijing: Democracy and Legal Press, 1990). pp. 66-72.

<sup>7</sup> 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 1949-1990*), (Beijing: Democracy and Legal Press, 1990). pp. 86-94.

is to amend the Constitution. It is a supreme legislative power which is different from the general legislative powers. It requires the votes of two thirds of the NPC deputies to pass,<sup>8</sup> unlike general legislation, which requires a simple majority to pass. The other power is to make and amend basic laws such as criminal, civil, and administrative laws. On the other hand, according to Article 67 of the Constitution, the legislative powers of the NPCSC are: (1) to enact and amend laws, with the exception of those which should be enacted by the NPC plenary session; (2) when the NPC is not in plenary session, to partially supplement and amend the laws enacted by the NPC plenary session, with the proviso of being consistent with the basic principles of these laws. However, the NPC plenary session has power to alter or annul inappropriate amendments made by the NPCSC;<sup>9</sup> (3) to interpret laws including the Constitution and supervise their enforcement; and (4) to annul administrative regulations, ministerial rules made by the executive and local regulations made by the sub-national PCs that contravene the Constitution or the laws.

### **1.1.2. Legislative power of the NPCSC special committees**

Committees exist in most legislatures.<sup>10</sup> The functions of committees in the legislative process vary in different countries. Committees in the British Parliament primarily play an assistant or supporting role in the legislative process. They are to accelerate the legislative process by improving the legislative mechanisms.<sup>11</sup> Committees in the US Congress play a decisive role at each stage of the legislative process. The U.S. Congress makes most of its legislative decisions in committees and subcommittees.<sup>12</sup> The British Parliament and the U.S. Congress are typical examples of the legislative role of the committee played in the legislature. The role of the committee system in the NPC is more like the British model, which is characteristic of a promoting role, rather than a decisive one in the legislative process.

In terms of the NPC special committees, strictly speaking, they have no legislative power. As permanent institutions, their duties are to assist the NPC and the NPCSC in drafting

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<sup>8</sup> See Article 64 of the Constitution: Amendments to the Constitution are to be proposed by the NPCSC or by more than one-fifth of the deputies to the NPC and adopted by a vote of more than two-thirds of all the deputies to the Congress.

<sup>9</sup> See Article 62, the 1982 Constitution.

<sup>10</sup> John D. Lees and Malcolm T. Shaw, *Committees in Legislatures: A Comparative Analysis*, (Durham, N.C.: Duke University Press, 1979). p. 3.

<sup>11</sup> Stuart A. Walkland, "Committees in the British House of Commons", in *Committees in Legislatures: A Comparative Analysis*, ed. John D. Lees and Malcolm T. Shaw, (Durham, N.C.: Duke University Press, 1979). pp. 242-287.

<sup>12</sup> Lees, "Committees in the United States Congress". pp. 11-60.

and deliberation. The former NPC leader, Peng Zhen, has pointed out that the special committees are the right arm of the NPC and the NPCSC. He outlined that “the bills submitted to the NPC or the NPCSC are relevant with many important and complex issues about the socialist modernisation. In order to help the NPC and the NPCSC solve problems and make decisions, the special committees are to conduct investigation, to listen to opinions from all sides, to compare the various options available.”<sup>13</sup> Peng Zhen also has listed four reasons why the NPC and the NPCSC need the assistance of the special committees: firstly, it is easy to do research and discussion in the special committees because the members of the special committees are far fewer than the NPC deputies; secondly, each special committee concentrates on one particular area, so as to do research on the area thoroughly and deeply; thirdly, the bill initiators and all interested parties can sit in on the special committees’ meetings, to express their opinions, and join the discussion; finally, if necessary, the special committees invite outside experts to attend the meeting in order to contribute opinions.<sup>14</sup>

The special committees do not issue orders in their own names because they are not independent state organs endowed with legislative power. Although they do issue some resolutions, the resolutions are to propose bills or suggestions to the NPC or the NPCSC. The functions of the special committees in ‘assisting’ the NPC and the NPCSC are threefold: firstly, they deliberate bills given by the NPC presidium or the NPCSC and presents a deliberation report;<sup>15</sup> secondly, they deliberate administrative regulations and local regulations which are considered to be in contradiction with the Constitution and relevant laws; finally, they organise legislative research and legislative hearings, in order to provide the NPC and the NPCSC with reference on legislative issues.

The NPC and the NPCSC are the legislative bodies because the Constitution empowers them to exercise legislative power. However, in an era of executive domination, the legislative status of the NPC is in danger of being eroded by the executive branch or the Party. Some Chinese scholars maintain the opinion that the NPC should dominate the legislative process. As Zhou stated: “As a legislative authority, the NPC ought to have

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<sup>13</sup> Peng Zhen, "Speech at the First Plenary Meeting of 6<sup>th</sup> National People's Congress (Liujie Renda Yici Huiyi De Jianghua)", in *On Building of Socialist Democracy and Legal System at New Era (Lun Xinsiqi De Shehui Zhuyi Minzhu He Fazhi Jianshe)*, ed. Peng Zhen, (Beijing: Central Party Literature Press, 1989). p. 189.

<sup>14</sup> Peng Zhen, "How Does the Specialised Committees Work (Quanguo Renda Zhuanmen Weiyuanhui Zenme Gongzuo)". p. 183.

<sup>15</sup> See Article 30 of the Legislation Law: “The legislative bill placed on the agenda of a meeting of the NPCSC shall be deliberated by the relevant special committee, which shall offer its opinions after deliberation and have them printed and distributed at the Standing Committee meeting”.

the final say on legislation ...without the dominance in the legislative process, the NPC would not have the virtual legislative power.”<sup>16</sup>

Some scholars think positively that the NPC system has been reforming and improving in many respects, especially on legislation: “In terms of the legislative effect, the NPC has become a leading player from a passive one; regarding to the legislative sense, the NPC makes laws proactively instead of passively; with respect to legislative guiding thoughts, it has changed from law instrumentalism to legislation based on protection of rights. All those changes mirror the NPC has started to exert its legislative power substantially, rather than nominally.”<sup>17</sup>

## **1.2. The legislative power of the executive on paper**

According to the Constitution, the State Council is ‘the executive body for the highest organ of state power.’<sup>18</sup> The State Council is to implement the laws or decisions passed by the NPC, which means that the State Council is subordinate to the NPC. Article 89 of the Constitution grants the State Council 18 powers and functions, of which there are five related to legislation: “(1) to enact administrative regulations and rules in accordance with the Constitution and laws; (2) to initiate bills to the NPC; (3) to alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions; (4) to alter or annul inappropriate decisions and orders issued by local organs of state administration at different levels; (5) to exercise such other functions and powers as the NPC or the NPCSC may assign it.”<sup>19</sup>

Under the Constitution, the State Council can only make administrative regulations to implement the existing national laws , which shall not contravene the Constitution and laws, and which must be reported to the NPCSC for recording.<sup>20</sup> The mechanism is confirmed by Article 56 of the *Legislation Law* as well.<sup>21</sup> However, it is noteworthy that the Constitution grants the State Council one open-ended authority: “to exercise such

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<sup>16</sup> Wangsheng Zhou, "50 Years of China's Legislation (Zhongguo Lifa 50 Nian)", in *Legislative Studies* (Law Press, 2000). p. 79.

<sup>17</sup> Dingjian Cai, "Legislative Development and Historic Change of the National People's Congress for 20 Years (20 Nian Renda Lifa De Fazhan Ji Lishixing Zhuanbian)", in *The Development and Reform of the National People's Congress for 20 Years (Renmin Daibiao Dahui Ershinian Fazhan Yu Gaige)*, ed. Mingguang Wang and Dingjian Cai, (Beijing: China's Procuratorial Press, 2001). p. 57.

<sup>18</sup> See Article 85, the 1982 Constitution.

<sup>19</sup> See Article 89, the 1982 Constitution.

<sup>20</sup> See Articles 5, 58, and 100, the 1982 Constitution.

<sup>21</sup> Yahong Li, "The Law-Making Law : A Solution to the Problems in the Chinese Legislative System?", *Hong Kong Law Journal*, 30, no. 1 (2000): 120-40.

other functions and powers as the NPC may assign to it.”<sup>22</sup> Therefore, some of the powers given to the State Council are at the discretion of the NPC. On April 10, 1986, in the third session of the 6<sup>th</sup> NPCSC, a resolution was passed to authorise the State Council to make temporary regulations in reforms of China’s economic system and its opening up to the world. The *Legislation Law*, which was promulgated in 2000, allows the NPC and the NPCSC to authorise the State Council to enact administrative regulations on the matters exclusively belonging to the jurisdictions of the NPC and the NPCSC.<sup>23</sup> However, the authorisation cannot be extended to areas concerning crimes and punishments, restriction and appropriation of citizens’ political rights and personal freedoms, and the judicial system. The authorisation has to be specific as to the purpose and scope, and is not transferable.<sup>24</sup> The authorised power expires upon the enactment of a relevant national law on the same matter.<sup>25</sup>

Prior to the 1982 Constitution, literally according to legal documents, the State Council and its ministries did not have any legislation-making power. Article 49 of the 1954 Constitution stipulated that the State Council only had power, to “issue measures, resolutions and orders, and review the implementation of these resolutions and orders in accordance with the Constitution, laws and decrees”, “to initiate bill to the NPC or the NPCSC”<sup>26</sup>; The subsequent 1975 Constitution (Article 20) and the 1978 Constitution (Article 20) had the same stipulation.<sup>27</sup> However, when the 1982 Constitution was enacted, it stipulated explicitly that the State Council and its ministries have the power to make legislations like administrative regulations and rules. Apart from conferring on the agencies the right of making administrative rules directly under the State Council which has administrative functions, in 2000, the *Legislation Law* further stipulated the State Council’s and its ministries’ policy-making power in details: Article 56 of the *Legislation Law* stipulates, “the State Council shall, in accordance with the Constitution and laws, formulate administrative regulations; the administrative regulations may be formulated to govern the following matters: (1) matters requiring the formulation of administrative regulations in order to implement the provisions of law; (2) matters within the administrative functions and powers of the State Council as provided in Article 89 of the

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<sup>22</sup> See Article 67, the 1982 Constitution.

<sup>23</sup> Articles 9 and 56, the *Legislation Law*.

<sup>24</sup> Article 10, the *Legislation Law*.

<sup>25</sup> Article 11, the *Legislation Law*.

<sup>26</sup> 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 1949-1990*). pp. 66-72.

<sup>27</sup> *ibid.* pp. 86-94.



Constitution; (3) matters which have been governed by the administrative regulations formulated first by the State Council under authorisation of the NPC or the NPCSC.”<sup>28</sup>

Article 71 of the *Legislation Law* stipulates: “The ministries and commissions of the State council, the People's Bank of China, the State Audit Administration as well as the other organs endowed with administrative functions directly under the State Council may, in accordance with the laws as well as the administrative regulations, decisions and orders of the State Council and within the limits of their power, formulate rules.”<sup>29</sup> Moreover, “Matters governed by the rules of departments shall be those for the enforcement of the laws or the administrative regulations of the State Council.”<sup>30</sup>

It is worth mentioning that, in terms of the content of the administrative regulations and rules, in the 1980s and the 1990s, in order to incorporate the ‘reform and opening’ policies, the focus of the administrative regulations and rules was in the field of economy. By the 2000s, it changed, especially when the *State Council Work Planning* which was enacted in 2008, mentioned, “The priority of the administrative regulations and rules is to change from primarily in the economic field to the field of social management and public services and the field of economic regulation and market supervision.”<sup>31</sup> From the author’s observation, nowadays, administrative regulations on people's livelihood and environment attract much attention.

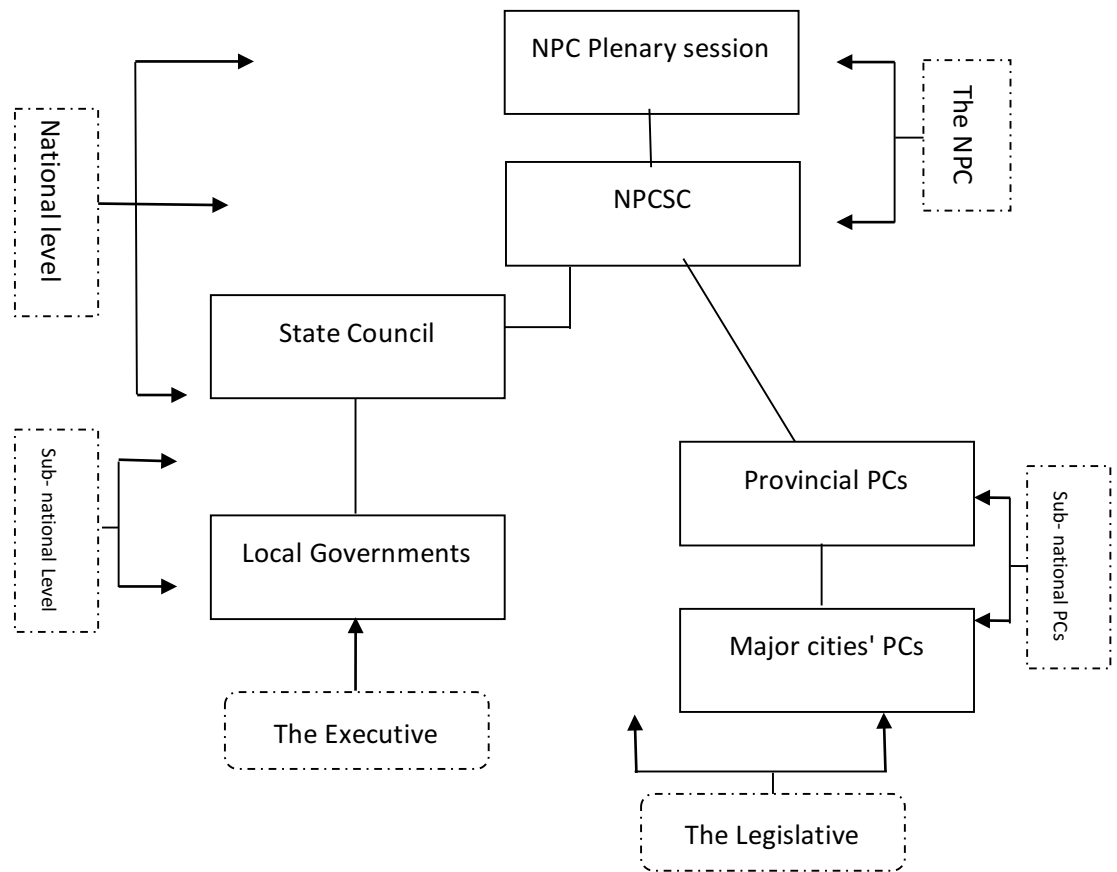
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<sup>28</sup> Article 56, the Legislation Law.

<sup>29</sup> Article 71, the Legislation Law.

<sup>30</sup> Ibid.

<sup>31</sup> Kangtai Cao, "China's Political and Legal Construction for 30 Years (Woguo Zhengfa Fazhi Jianshe Sanshi Nian)", in *Law Yearbook of China 2009 (Zhongguo Falv Nianjian 2009)*, (Beijing: Law Yearbook of China Press, 2009). p. 41.



**Figure 1:** Hierarchical structure of legislative bodies in China

Therefore, on paper, the NPC and the executive are discrete. The NPC and the executive are endowed legislation making and implementation role. The NPC and the executive are each responsible for certain tasks that cannot be done by the other. Each stands apart and respects the autonomy of the other.

## 2. Cooperative coexistence mode

The second mode of relationship between the legislature and the executive in the legislative process is a cooperative relationship. In China, although the control of the CCP over the legislative process has been eroded, its manifestos still has decisive impact on the legislation. As a result, the executive and legislature both occupy stable and effective positions in the legislative process under the influence of the CCP. As it is known, organisational development is not necessarily accompanied by conflict among institutions. It is also possible and may be occurring with cooperation and without winning autonomy. As O'Brien points out, cooperation with the executive plays a significant role in Chinese

legislative development.<sup>32</sup> The development of the NPC occurs with cooperation instead of conflict with the executive.

From a general perspective, a close and steady cooperation between the executive and the legislature is needed in facilitating legislative affairs. Cooperation between legislative and executive branches is essential to building an effective and functional government. Both the executive and the legislature are state bodies with the functional capacity to facilitate national goals such as economic expansion or improvement of public welfare. Thus, teamwork is required between the legislature and the executive.

To be concrete, in the Chinese legislative process, the NPC relies on the relevant government departments for providing support. For instance, for bills involved with the executive's jurisdiction, the NPC needs support from the executive on sharing information and collecting data for the drafting. Correspondingly, the executive's legislative activity is inseparable from the NPC's involvement. Taking bills drafted by the executive as examples, before they are submitted to the NPC for deliberation, usually the NPC gets involved in the drafting stage. The executive has to consider the likely reaction of the PCs when it proposes a bill to the PC system. If a negative reaction is anticipated, then the executive may not proceed with the bill, or may modify the bill in advance. Hence, the success of a bill closely relies on the cooperation of the executive and the legislature. In addition, the cooperative model provides greater stability in the executive-legislative relationship.

Furthermore, theoretically, it is possible for the PC system and the executive working together to create good conditions for the institutional development of democracy. The legislature and the executive may have a cooperative relationship to protect themselves from the Party's encroachment, although it seldom happened in reality. Before the 1978 'reform and opening', the CCP gradually established a highly integrated 'party-state' political structure; since 1978, although the CCP started to implement adjustment reforms of the party-state system under the leadership of Deng Xiaoping, the integrated structure of the party state has not changed greatly. In these circumstances, the legislative work is subject to the Party's policy. As a result, the NPC and the executive work together on legislation under the leadership of the CCP.

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<sup>32</sup> O'Brien, "Chinese People's Congresses and Legislative Embeddedness: Understanding Early Organizational Development". p. 100.

In the history, the Party at least plays a role in determining guidelines for the legislative process.<sup>33</sup> The Party leadership intends to make it clear that China does not have separation of powers. The executive and the legislative work together to govern the country, under the leadership of the Party. They do not conflict with each other.

In order to strengthen the Party's leading role in legislative work, the Central Committee of the CCP issued *Several Opinions on Strengthening the Party's Leadership on National Legislation* in 1991, requiring prior approval of legislative guidelines and principles of legislation, and the submission of important laws to the Central Committee for deliberation before approval. Therefore, although the Party may rarely intervene in the legislative drafting, initiation and deliberation, the NPC and the executive's 'consciousness' regarding implementing the Party's will is strong. This point can be founded obviously from the case study below. This is because most of the NPC and State Council members are CCP members. Although they may not be conscious that the identity of Party members has any impact on their participation in the legislative work, the NPC and the State Council members will 'unconsciously' abide by the Party's policy, since if they go against the Party's will, their political career will be affected, and they could even lose their membership.

In addition, Chinese people accept the idea that teamwork between legislative and executive branches is essential to build an effective government. The NPC is not only a legitimation agency, representative organ and decision-maker but also a institution with the functional capacity to facilitate national goals such as economic expansion or social redistribution. China, like other developing countries, is facing the contradiction between social redistribution and economic growth. As social redistribution became a barrier to economic development, the regime has moved to undertake investments, regulate the scope of interest group demands, and subordinate the objective of social justice. Certainly, this requires teamwork between the legislative and the executive branches.

### **3. Competing mode.**

The third is the competing model. Apart from the cooperative relationship, there is an adversarial relationship between the legislature and the executive in the Chinese legislative process. The legislature claims its supreme position to exercise the legislative power, challenging the claims of the executive to impinge on its capacity to determine

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<sup>33</sup> Zhou, "50 Years of China's Legislation (Zhongguo Lifa 50 Nian)". p. 35.

the laws. The executive asserts its competence to influence, even dominate the legislative process.

In the transition from governance by administrative policy to governance by law in China, the executive aims to maintain its vested interests. Hence, the executive tries to safeguard its power by dominance over the legislation. According to Chen's research, in the legislative planning stage, the majority of legislative projects included into the legislative plan are from the executive.<sup>34</sup> In the drafting stage, with the development of a market economy in China, the increasingly complicated economic and administrative affairs inevitably render the legislative affairs complex. Due to the dominance of the executive in economic and administrative affairs, the executive dominates the drafting of administrative and economic laws. Also, the executive, as the centre of resource allocation, has advantages in legislation. In total, the bigger number of laws being drafted by the executive reflects the advantage of the executive in the legislative process. In the deliberation stage, overall, the fact that less time is spent on the bills drafted by the executive,<sup>35</sup> suggests that it is relatively easier to get bills drafted by the executive passed.

Tanner argues that "China is a Confucian-influenced political culture and a state system which is basically parliamentary in structure."<sup>36</sup> It is characterised by 'strong government administrative systems' and 'weak electoral and legislative systems'.<sup>37</sup> As a result, 'obstruction instruments' such as intense debates, the negation of deliberation and voting, the deferral of consideration suspension of deliberation, and temporary cessation of voting do not occur often, as such practices are contrary to the thinking that "harmony is precious" in the political culture of China. In addition, among the NPCSC members, the vast majority have had experience of working for the executive, so it is difficult to exclude the possibility of informal contacts with the executive. When the executive wishes to pass a particular bill in the NPC/PCs, under the atmosphere of China's society of interpersonal relationship (*Renji Guanxi*), the executive can obtain support from some PC members via contact in private. This is similar to lobbying activities in established democracies, but much harder to control due to lack of appropriate institutional constraints. Therefore, the

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<sup>34</sup> Chen, Wenbo, "Is the label 'minimal legislature' still appropriate? The role of the National People's Congress in China's political system", *Journal of Legislative Studies*, 2016(3).

<sup>35</sup> Ibid.

<sup>36</sup> Tanner, *The Politics of Lawmaking in Post-Mao China: Institutions, Processes, and Democratic Prospects*. p. 120.

<sup>37</sup> Ibid. p. 121.

thinking that bills of the executive "just have to go through some procedures" in the NPC (i.e. their approval is a formality) exists widely in the Party and the executive.<sup>38</sup> This defect potentially provides the executive with an opportunity to dominate the legislature. However, some research shows that, in the Chinese legislative process, the NPC has shown an increasing amount of autonomy from the executive. In the legislative planning stage, the legislative projects proposed by the NPC have a bigger chance of becoming laws than the ones proposed by the executive. In the drafting stage, the NPC has dominated the drafting of constitutional-related law, criminal law and litigation and non-litigation procedural law. In the deliberation stage, the average deliberation times and deliberation days on the bills initiated by the executive have increased.<sup>39</sup> Thus, it can be said that the competing relationship between the NPC and the executive is existed in the Chinese legislative process.

#### **4. Case study: the amendment of the Budget Law**

The budgetary process with both legislative and executive involvement is regarded as "one of the vital checks and balances of democracy."<sup>40</sup> As a result, the budgetary process is often the cause of friction and cooperation between the legislative and the executive branches.<sup>41</sup> Normally, the legislative body plays an important role in the process despite the executive dominance over the budget. In most countries, the legislatures exert their influence over the budget through the budget amendment process. This capacity varies considerably among legislatures. The U.S. Congress, for example, possesses infinite budget amendment powers in the budget process. As a more recent example, the U.S. Congress did not pass the appropriation bills in 2013. This resulted in a partial federal government shutdown. Likewise, in China, the key factors in the budgetary process are the executive and the legislative branches. The *Budget Law of People's Republic of China* promulgated in 1994, which is known as the 'economic constitution', is the first law on budget management. The importance of the budget makes the *Budget Law* crucial to the

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<sup>38</sup> Interview, 28/02/2014.

<sup>39</sup> Chen, Wenbo, "Is the label 'minimal legislature' still appropriate? The role of the National People's Congress in China's political system", *Journal of Legislative Studies*, 2016(3).

<sup>40</sup> Support for Improved Governance and Management in Central and Eastern European Countries, "Anatomy of an Expenditure Budget", (Paris: OECD, 1997). Available online: <http://www1.worldbank.org/publicsector/pe/April2003Seminar/Course%20Readings/01.%20Overview/SIGMAPaper.pdf>. [Accessed on 2/2/2015].

<sup>41</sup> Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations". p. 15.

operation of government. The *Budget Law* can be significant for the NPC as it places the executive power under restraint, strengthens the functions of the NPC and is intended to improve public engagement.

With the development of the economy, the 1994 *Budget Law* had become increasingly flawed. In 2004, the amendment of the *Budget Law* was placed in the legislative planning of the NPC. After a decade, through three sessions of the 10<sup>th</sup> NPC, the amendment of the *Budget Law* was finally completed in 2014. By looking into the amendment process of the *Budget Law*, this part provides a case study of executive-legislative relations in the Chinese legislative process.

#### **4.1. The winding course of the amendment of the *Budget Law***

The *Budget Law of the People's Republic of China* was passed by the second meeting of the 8<sup>th</sup> NPC on 22<sup>nd</sup> March 1994 and was implemented on 1<sup>st</sup> January 1995. However, with social and economic developments, shortcomings of the *Budget Law* were exposed. These problems made the *Budget Law* incapable of adjusting to the actual budget practices.<sup>42</sup> Rather than developing into the stage of 'external political control' at which control of the budget is intensified by legislative bodies, the focus of the 1994 *Budget Law* was to improve 'internal administrative control' so as to improve the efficient use of financial capitals. Therefore, in today's political, economic and social background, the *Budget Law* should be further revised. However, the amendment process is complicated.

As the basic law governing the budget in China, the *Budget Law* is therefore an important 'Economic Constitution'. It is significant because of its great influence on national politics, economy and people's life. However, due to the interwoven relationships between different parties, the amendment progressed slowly—during the past decade from its launch in 2004 to the promulgation of the amendment in 2014. Working groups were established twice and the amendments went through four deliberations and were subjected to public opinions. The following table presents this amendment process in six stages (See Table 16):

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<sup>42</sup> Jianwen Liu and Wei Xiong, "The Development and Improvement of the China's Budget Law (Zhongguo Yusuan Fa De Fazhan Yu Wanshang Zhouyi)", *Administrative Law Review*, no. 04 (2001): 6-12.

**Table 1: Chronicle of events of the Budget Law Amendment**

<b>Event</b>	<b>Dominant actor</b>	<b>Planned Date</b>	<b>Actual Date</b>	<b>Result</b>	<b>Note</b>
<b>First Draft</b>	The NPC		2004	Strong opposition of the executive	The executive considered the first draft to be in favour of the NPC
<b>Second Draft</b>	The NPC and the Executive drafts reviewed		2008	They fail to achieve agreement	The drafts made by the NPC and the executive were too divergent to combine
<b>Third Draft</b>	The executive		2010.7	Ready for submission to the NPC for deliberation	The executive took a lead in drafting the amendment.
<b>First Deliberation</b>	The executive	2010.8	2012.2	One year extension. The draft undisclosed	The differences among government departments cause the extension.
<b>Second Deliberation</b>	The executive		2012.6	The draft disclose for public opinion.	It was criticised by the public and scholars for being in favour of the executive.
<b>Third Deliberation</b>	The NPC	2013.8	2014.4	Extension due to controversy of draft for second deliberation.	The draft was modified substantially to constrain the executive power on budget.
<b>Fourth deliberation</b>	The NPC		2014.8	Passed	Compared with the draft for the third deliberation, the content of the draft for fourth deliberation resulted in a few changes.

*Table made by author*



#### **4.1.1. The first draft : ‘Abortion’ of the first draft due to substantial divergence**

In 2004, the NPC’s working group on the amendment of the *Budget Law* was established. Since then, the amendment has been formally listed in the NPC’s legislative planning. During the 10<sup>th</sup> session of the NPC, the first draft of the *Budget Law* amendment, which was mainly led by the Financial and Economic Committee of the NPC, was scheduled to be submitted to the NPCSC for deliberation in October 2006. The first draft, which was mainly drafted and led by the NPC, was an imitation of many developed countries’ experiences in budgetary institution. It emphasises the importance of supervision on government budget.<sup>43</sup> However, the relevant government ministries thought the amendment had too much control and supervision on the executive and due to the strong opposition from the Ministry of Finance, the first draft was eventually abandoned.<sup>44</sup>

#### **4.1.2. The second draft : Fruitless termination**

In 2008, in the 11<sup>th</sup> NPC, a working group for the amendment was established again. The head of the working group was the director of the Budgetary Affairs Commission of the NPCSC and the deputy head was the deputy minister of the Ministry of Finance. This time, considering the failure of the previous amendment led by the NPC, two drafting groups were organised respectively by the Financial and Economic Affairs Committee of the NPC and the Ministry of Finance, with the hope of producing a more appropriate proposal. However, from the amendment results made by the two working groups, it could be seen that legislative orientations were completely different and uncoordinated. As a result, the second draft did not go through to the next step of the legislative process.

#### **4.1.3. The third draft: the dominance of the executive**

In 2009, under the joint leadership of the Budgetary Affairs Commission of the NPCSC and the Ministry of Finance, 15 government departments including the National Development and Reform Commission, the Audit Administration and the Central Bank and so on, made up a working group on the amendment of the *Budget Law* once again. The head of the working group was Gao Qiang, the then director of the Budgetary Affairs Commission of the NPCSC,

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<sup>43</sup> Zhengwen Shi, the director of the fiscal and taxation law research centre in China University of Political Science and Law, said in interview with the *Southern Weekend*, Available online: <http://www.infzm.com/content/93784> [Accessed 20/02/2015].

<sup>44</sup> Citing the interview of Sen Wei, a professor at school of economics of Fudan University with the *Southern Weekend*, Available online: <http://www.infzm.com/content/93784>. [Accessed 20/02/2015].

and one who had long been serving in the financial system. The deputy head was Liao Xiaojun, the then deputy minister of the Ministry of Finance. By setting up a new working group, they gave up the second draft and decided to restart the amendment from the beginning. At that time, the Ministry of Finance was already the dominant player in the amendment. The 2009 working report concluded by the Law Department of the Ministry of Finance stated “the amendment of the *Budget Law* has gained important achievement”. According to the working report, the Ministry of Finance put forward 21 draft proposals successively in that year. Xie Xuren, the then minister of the Ministry of Finance, deputy minister Liao Xiaojun and assistant minister Liu Hongwei coordinated and communicated with the Budgetary Affairs Commission of the NPCSC for the amendment. By the beginning of 2010, on the basis of more than 30 draft proposals advised by the Ministry of Finance, the third draft of the *Budget Law* Amendment was adopted and accepted by all parties.<sup>45</sup>

#### **4.1.4. The first deliberation: bill undisclosed**

The third draft of the *Budget Law* amendment was submitted to the Legal Affairs Office of the State Council by the Ministry of Finance. The whole process from drafting the amendment to the deliberation was conducted in a confidential way. Not only did the public have no access to the content of the amendment bill, but also scholars in the field of budget law study were unable to join the discussion on the amendment.

According to the legislative plan made by the NPCSC in 2010, before putting the amendment to vote in March 2011, the bill should have been sent for deliberation in August 2010, and should have gone through the second and third deliberations in October and December respectively. According to the Finance Magazine (*Caijing*), as required by the State Council in August 2010, the *Budget Law Amendment (draft)* should have been deliberated and approved by the standing committee of the State Council first before submitting to the NPCSC for deliberation. The State Council also had to solicit opinions within its departments. Therefore, the first deliberation was postponed, followed by more than one year of ‘review’ within the State Council.<sup>46</sup> By that time, ‘trans-department divergence’ became one of the main oppositions. The disagreement was due to the big divergence on the right of treasury management between the Central Bank and the Ministry of Finance. The two sides strived for

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<sup>45</sup>See the Southern Weekend, "Three Sessions of the National People's Congress, One Decade of the Amendment, the Budget Law Tests China (Sanjie Renda, Shinian Xiufa, Yusuan Fa Kaoyan Zhongguo)", Available online: <http://www.infzm.com/content/93784>. [Accessed on 22/03/2015].

<sup>46</sup> Ibid.

their rights by making written statements so that the Legislative Affairs Office of the State Council had no choice but to mediate between them.

In 2011, the Legislative Affairs Office of the State Council met with relevant departments to further amend the draft. It was not until the end of 2011 that the draft was discussed and approved by the 181<sup>st</sup> Standing Committee of the State Council, which was hosted by the then premier Wen Jiabao. Xie Xuren, the then minister of the Ministry of Finance initiated the *Budget Law Amendment* bill to the NPCSC on behalf of the State Council and the Ministry of Finance. Not long after that, although the bill was still inaccessible to the public, it was submitted to the NPCSC for the first deliberation in November 2011. In February 2012, the 24<sup>th</sup> meeting of 11<sup>th</sup> NPCSC made the first deliberation. After the meeting, the Legislative Affairs Commission of the NPCSC printed out the bill and distributed it across provinces (regions, municipalities), as well as relevant departments for soliciting advices. Based on the opinions solicited from various parties, a second draft was produced for the second deliberation.

#### **4.1.5. The second deliberation: huge controversy**

On 26<sup>th</sup> June 2012, the 27<sup>th</sup> meeting of the 11<sup>th</sup> NPCSC started the second deliberation. In the deliberation, the NPCSC members found that, compared to the first draft, the second draft only had slight changes. It did not reflect the ways in which the NPC had improved its power of budgetary supervision. In addition, there were many controversies in budget making, transfer payment, local debts and so on.<sup>47</sup> Considering the ambiguity of the content of the bill, many articles were not specific and were unworkable. Powers of examination, approval and supervision which should pertain to the NPC and the NPCSC were delegated to the government in various ways through those articles. Special financial accounts were authorised to the Ministry of Finance. Extra-budgetary revenues were only required to be declared rather than being subject to the NPC's examination and approval. It is not difficult to find out the executive still plays a dominant role in the drafting process.

It was only on the 6<sup>th</sup> July 2012, which was one week after the second deliberation by the NPCSC that the Law Committee of the NPCSC disclosed the second deliberation draft on the NPC's official website for soliciting opinions from the public. There was no news conference and media coverage for this event. The Law Committee only put the amended articles on the website and scheduled to close the section on 5<sup>th</sup> August. However, comments from the public

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<sup>47</sup> Ibid.

about the second deliberation draft reached 330,960.<sup>48</sup> The number of opinions received was unprecedented. Scholars generally regarded the second deliberation of the *Budget Law* as more like a government work rule in which trans-department interests in the financial system were reflected to a great extent.

In the disclosed draft, instead of limiting the power of the executive by the NPC, the power of government on budget was enhanced, especially with regard to the budgetary power of the Ministry of Finance. The provisions in the management of the National Treasury by the People's Bank were removed. These factors aroused controversy. According to the statistics, there were as many as 15 provisions authorising the State Council in the draft for second deliberation by clearly stating such words as "shall be provisioned by the State Council separately." In contrast, provisions in the examination and supervision on budget by the NPC and the NPCSC were very simplified and abstract. Provisions on the public's rights to information, supervision and participation on government budget did not exist.

Therefore, the third deliberation draft of the amendment of the *Budget Law* attracted great attention from the public. It did not come into being and was not put on the meeting's agenda at the 30<sup>th</sup> meeting of the 11<sup>th</sup> NPCSC, which was held in December 2012. Later on, due to divergences from various parties on the draft of the amendment of the *Budget Law*, the one that was prepared for the third deliberation, was not included at the 11<sup>th</sup> NPCSC meetings. The third deliberation draft was postponed and the work on amendment had no other option but to transfer it to the next NPC session.

#### **4.1.6. The third and fourth deliberations: Completion of the amendment**

On 25<sup>th</sup> February 2014, the 7<sup>th</sup> meeting of the 12<sup>th</sup> NPCSC was held in Beijing. However, deliberation on the amendment of the *Budget Law* was still not on the meeting's agenda and there were only four months left to the two year 'anniversary' of the last deliberation on the *Budget Law* amendment by the NPCSC.<sup>49</sup> According to the *Legislation Law*, bills for the NPCSC deliberation should be terminated if they failed to progress for deliberation due to significant disagreement for two years, or if they were not subject to vote within two years due to having failed to be placed again on the agenda of a meeting of the NPCSC for deliberation.<sup>50</sup>

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<sup>48</sup> Caixin, "The Amendment of the Budget Law Received over 330,000 Opinions and Comments Online (Yusuanfa Xiuding Wangshang Zhengde Yijian Chao 33wan Tiao)", Available online: <http://m.economy.caixin.com/m/2012-08-06/100419872.html>. [Accessed on 14/3/2015].

<sup>49</sup> Ibid.

<sup>50</sup> See Article 39, the Legislation Law.

It was only at the 8<sup>th</sup> meeting of the 12<sup>th</sup> NPCSC on 21<sup>st</sup> April 2014 that the *Budget Law* amendment draft was submitted to the 12<sup>th</sup> NPCSC for the third deliberation. It was the last NPCSC meeting before the imminent ‘two-year deadline’ from the last deliberation. A big change between the second and the third deliberation was the commencement of the third plenary session of the 18<sup>th</sup> Central Committee of the CCP. During the meeting, important and meaningful guidance on how to structure a comprehensive reform was issued. Shi pointed out that “Compared to the draft for the second deliberation, the draft for the third deliberation has made significant changes. This was achieved due to the clear guidance of the CCP; the third deliberation draft was widely absorbed and implemented the provisions in the reform of fiscal and tax system, as set out in the third plenary session of the 18<sup>th</sup> central committee of the CCP.”<sup>51</sup>

In addition, it is worth mentioning that in the third plenary session of the 8<sup>th</sup> Central Committee of the CCP, the Party made efforts to facilitate the institutional innovation of the PC system both in theory and practice.<sup>52</sup> An interviewee pointed out that it was the first time that a Party’s manifesto mentioned explicitly the institutional development of the PC system.<sup>53</sup> It can be seen as a signal that the Party may push some policies which are in favour of the NPC. Meanwhile, significant changes in the draft for the third deliberation, which are all beneficial to the NPC, happened just after the third plenary session of the CCP. The linkage between these two occasions cannot be ignored.

Xiong revealed that on the 11<sup>th</sup> and 12<sup>th</sup> August 2014, the Legislative Affairs Commission of the NPCSC had convened scholars to solicit opinions on the fourth deliberation draft of the amendment of the *Budget Law*.<sup>54</sup> Liu stated that after three revisions of the previous three deliberation drafts, significant progress had been made in the amendment of the *Budget Law*. This progress covered areas such as aspects of legislative purposes, budget transparency and permission for issuing local debts. He said, “The draft for the third deliberation is relatively a

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<sup>51</sup> "New Budget Law Published This Week, Budget Approval May Have Concrete Institutional Arrangement (Xin Yusuan Fa Youwang Benzhou Chutai, Yusuan Shenpi Deng Huoyou Juti Zhidu Anpai)", *Economic Information Daily* 2014. Available online: [http://news.xinhuanet.com/fortune/2014-08/25/c\\_1112205513.htm](http://news.xinhuanet.com/fortune/2014-08/25/c_1112205513.htm). [Accessed 30/03/2015].

<sup>52</sup> Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform, Available online: [http://news.xinhuanet.com/politics/2013-11/15/c\\_118164235.htm](http://news.xinhuanet.com/politics/2013-11/15/c_118164235.htm) [Accessed on 3/04/2015].

<sup>53</sup> Interview, 06/03/2014.

<sup>54</sup> "Fourth Deliberation for the New Budget Law, through One Decade of Three Session of the National People's Congress (Xin Yusuanfa Jinying "Sishen" Shinian Shijian Sanjie Renda Jingshou)", Tencent Finance and Economics, Available online: <http://finance.qq.com/a/20140825/017656.htm>. [Accessed 15/03/2015].

mature one.”<sup>55</sup> Therefore, there would be little room for improvement in the fourth deliberation draft. On 24<sup>th</sup> August 2014, the *Budget Law* amendment draft entered into its fourth deliberation of the NPCSC. Compared with the draft for the third deliberation, no big changes had been made to the draft for the fourth deliberation.

It was the fourth deliberation that the *Budget Law* Amendment bill was put to the vote after deliberation. According to the *Economic Information Daily*, the NPCSC had half a day to make arrangement on the deliberation on the *Budget Law Amendment* bill. 160 members of the NPCSC were divided into six groups. Each group was to form its own opinion in their discussions and deliberating. These six groups conducted the deliberation simultaneously. The NPCSC members voted on 31<sup>st</sup> August<sup>56</sup>, leading to the *Budget Law Amendment* bill being endorsed at the 10<sup>th</sup> meeting of the 12<sup>th</sup> NPCSC. The amended *Budget Law* was planned to be implemented on the 1<sup>st</sup> January 2015. The passed bill kept the key tone of the first draft, which was provisioned by the NPC, which accentuates the constraint and supervision on government budget, as well as enhancing the NPC’s power of supervising the executive.

The budget is not only a fiscal issue, but also a political one. The winding course, the controversies and the postponement of the amendment of the *Budget Law* reflect the complexity of executive-legislative relations in the Chinese legislative process.

#### **4.2. Legislative process: scrambling for the legislative power between the NPC and the executive**

The budget has been known as a ‘moneybag’ and the power of controlling this moneybag is at the core of political power. The framework of the power structure in China’s budget is mainly underpinned by the distribution of budgetary power between the NPC and the executive. As a representative institution, the NPC should display the representation function by engaging citizens with the budget-making process. In the following, on the basis of the *Budget Law* amendment case, executive-legislative relations at two legislative stages of drafting and deliberation will be examined.

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<sup>55</sup> Jing Zhao, "New Budget Law Will Be Promulgated This Week. It Goes for Fourth Deliberation after Ten Years' Amendment (Xin Yusuan Fa Youwang Benzhou Chutai Shinian Nanchan Zongying Sishen)", *Economic Information Daily*, 25/08/2014. Available online:

<http://finance.sina.com.cn/china/20140825/014320104526.shtml>. [Accessed 25/03/2015].

<sup>56</sup> Ibid.

#### **4.2.1. Executive-legislative relations in drafting**

The core issue of the amendment of the *Budget Law* is who should lead in drafting. Will it be the NPC or the executive? Initially the drafting of the amendment of the *Budget Law* was led by the Budgetary Affairs Commission of the NPCSC. Relevant departments of the NPC and the State Council participated in the first drafting of the amendment bill. The amendment draft led by the NPC emphasised the constraint and supervision of government budget. However, it faced strong opposition from the Ministry of Finance and was aborted at the end as the executive perceived the proposed constraint was too great.

The fundamental reason why the work on the amendment, which was launched in 2004, came to a standstill after its first draft was the divergences between the NPC and the executive on who should be the core actor in the budgetary process. In particular, the divergences were in the provisions ‘whether the NPC has the right to make the amendment to the budget’, ‘how to define budget adjustment’ and ‘the boundary of the scope of budgetary management of the State Council’.

In 2008, the *Budget Law* amendment draft attempted to combine the drafts proposed by the Financial and Economic Affairs Committee of the NPC and the Ministry of Finance respectively. The second draft also failed, due to fundamental disagreements between the two sides as the NPC tended to limit the budgetary power of the Ministry of Finance while the Department of Finance was inclined to relax restrictions on its budgetary power. Until 2010, the Ministry of Finance, took the lead in drafting the amendment. As a result, the formulated bill submitted to the NPC for deliberation was clearly in favour of the executive.

The drafting process from 2004 to 2010 led to a gradual transfer of power from the NPC to the executive. The NPC failed in taking the leading position and took a subordinate status in the drafting process of the amendment of the *Budget Law*. It can be concluded that the competing mode of executive-legislative in drafting is predominated, despite the cooperative mode is also can be observed.

#### **4.2.2. Executive-legislative relations in deliberation**

The deliberation on the amendment was postponed twice during the whole process. The first deliberation, which was scheduled to be conducted in August 2010, was postponed to June 2012 due to the scrambling on the management rights to National Treasury within the executive (between the Central Bank and the Ministry of Finance). This was because the draft for the

first deliberation was dominated by the executive, which highlighted the divergences between government's ministries. As a matter of fact, in the State Council, there is some overlapping of jurisdiction among ministries. For the bills drafted by the executive, inside the executive, various ministries seek to protect their own benefits. Thus, sometimes the legislative process becomes a battle for benefit among ministries. As a retired official of the NPCSC claims that when the compromise on a bill cannot be achieved or there are still serious divergences between the ministries, those bills would be postponed for deliberation, even returned by the NPCSC to the OLA for re-negotiation.<sup>57</sup>

The second postponement happened when the draft for the second deliberation was published to the public for soliciting opinions by the NPCSC after the NPCSC's second deliberation. The draft for the second deliberation caused great controversy in public and among scholars. An unprecedented 330,960 comments were received. As a result, the NPC postponed the third deliberation for almost two years and nearly abrogated the bill because of the imminent 'two-year deadline' for postponing the deliberation.

The second delay can be seen as an obstruction tactic of the NPC to resist the *Budget Law Amendment* bill, which was made mainly by the executive. The NPC deferred the battle into the indefinite future by conducting legislative instruments, such as publishing the bill for public opinion and delaying deliberation to obstruct the bill, in the hope that the political climate may become inhospitable to it. As we know, in China's reform era, the NPC knew that delaying can often be tantamount to victory. In numerous previous cases, the NPC has insisted on delaying the controversial bill until "all social conditions are ripe," or until a "relatively perfect" draft had been worked out.<sup>58</sup>

It proves that the obstruction tactic by the NPC was successful and finally had its policy windows opened.<sup>59</sup> The newly designated CCP leadership had made specific comments on budgetary reform in the Third Plenary Session of the 18<sup>th</sup> Central Committee of the CCP. They emphasised the importance of government budget transparency, the NPC's supervision on government budget and public participation in the budget making. By taking such policy advantage, the NPC revised the amendment bill fundamentally by following the CCP's

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<sup>57</sup> Tan, "Urgently Need Legislative Reform after the Third Plenary Session of the CCP (Sanzhong Quanhui Hou Jidai Lifa Gaige)". [Accessed on 8/7/2014].

<sup>58</sup> Tanner, "How a Bill Becomes a Law in China: Stages and Processes in Lawmaking". pp. 58-59.

<sup>59</sup> See the "streams model" from John W. Kingdon, *Agendas, Alternatives, and Public Policies*, (Boston: Little, Brown, 1984). Chapter 8.



manifesto, and finally enabled the bill to pass, by which the power of the executive could be constrained. If the NPC did not obstruct the bill successfully and continued to submit for deliberation in 2010, according to the original 2010 legislative plan, and for vote in March 2011, the *Budget Law* amendment would likely be inclined towards the executive.

It can be said that the amendment process of the *Budget Law* is a reflection of the political rivalry between the NPC and the executive. On paper, in the respective autonomy mode of the executive-legislative relations, the distribution of power between the NPC and the executive is as follows: the NPC is the organ of supreme power while the executive is the implementation organ. As a representative and legislative organ, the NPC should have power to amend laws according to the public opinions and supervise government budget making and implementation. By contrast, government as the executive organ does not have any right to prevent the NPC from amending the *Budget Law*.

However, in fact, the structural disadvantages of the NPC affect its status in the executive-legislative relations in the legislative process. First of all, the PC deputies are not mandated by the public as they are indirectly elected. As a result, they are lacking serious momentum in supervising the budgetary decisions on behalf of the electorates. Secondly, most PC deputies are part-time and their expertise in budget deliberation is insufficient. In addition, there are too many government officials in the PC deputies. It means the government officials will supervise themselves on the budget. The supervision is very weak. Thirdly, the meeting sessions of the NPC are brief and do not allow enough time to examine any budgetary details thoroughly. At the sub-national level, some budget proposals just give brief outlines. Thus the PC deputies could not examine substantive details of the budget. Fourthly, instead of a vote on each specific article in the budget, deputies can only vote on the overall budget plan put forward by the government. In other words, rather than vetoing or passing each article, the NPC can only choose either to pass the whole budget without any discontent or veto it. The result is self-evident: the PC system cannot achieve targeted examination results by only passing the entire government budget. The structural limitations of the PC system also result in a mismatch of legislative and administrative powers, and seriously restrain the PC system's power on budgetary processes at various levels. However, with the development of professionalism and institutionalisation of the PC system, the system gradually became capable of resisting the bill through employing the legislative instruments, such as obstruction tactic.

### 4.2.3. The Impact of the CCP on the amendment of the *Budget Law*

As mentioned above, there was almost a two-year gap between the second and the third deliberation of the amendment of the *Budget Law*. This could be perceived as the NPC waiting intentionally for some favourable changes on budget system reform to be raised in the Third Plenary Session of the 18th Central Committee of the CCP in November 2013 before pushing forward the amendment. At the Third Plenary Session of the 18<sup>th</sup> Central Committee of the CCP on 15<sup>th</sup> November, a resolution named *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform* (hereinafter *The Decision on Deepening Reform*) was announced. The decision involved many issues related to the budget system reform. These issues included: (1) implementing comprehensive regulations, as well as an open and transparent budget institutions; (2) changing the main task of budget from making a balance between the revenues and expenditures to support the comprehensiveness of budget; (3) establishing a budget balance mechanism that was beyond the calendar year.

In addition, the *Decision on Deepening the Reform* not only included relevant provisions in budget management but also certain provisions on improving the NPC's legislation, supervision and representation functions: "... push forward the PC system to keep pace with the times".<sup>60</sup> It aimed at "improving China's socialist legal system with Chinese characteristics, enhancing the mechanism for legislation, drafting, demonstration, negotiation and deliberation in order to improve the quality of legislation and prevent local protectionism and departmentalism... developing the system in which 'one government (State Council), two courts (the Supreme People's Court and the Supreme People's Procuratorate)' is appointed by the NPC, and is subject to and supervised by the NPC... improving the NPC's decision-making system on major issues related to the governments at various levels. Before an important policy is enacted, it is needed to report to the PCs at the same level. This is to enhance the NPC's power of examination and supervision on budget, final accounts and the function of supervising national assets..."<sup>61</sup>

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<sup>60</sup> Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform, Available online: [http://news.xinhuanet.com/politics/2013-11/15/c\\_118164235.htm](http://news.xinhuanet.com/politics/2013-11/15/c_118164235.htm) [Accessed on 3/04/2015].

<sup>61</sup> Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform, Available online: [http://news.xinhuanet.com/politics/2013-11/15/c\\_118164235.htm](http://news.xinhuanet.com/politics/2013-11/15/c_118164235.htm) [Accessed on 3/04/2015].

At the same time, the decision also states that the NPC should improve public participation in the legislative process: "...to intensify communication between the NPCSC and the NPC deputies... to improve the connections between PC deputies and the people... to expand ways of public participation in the legislative process in an orderly manner through public hearings, assessments, publication of the draft bill... to engage with the public positively through inquiries, questionnaire, investigations of specific issues and recording reviews."<sup>62</sup>

During an interview, Gao Qiang, the former director of the Budgetary Affairs Commission of the NPCSC said that the major task was how to include stipulations about the direction and principles of budget management in *The Decision on Deepening the Reform in the Budget Law* amendment. At the end of 2013, an official from the Budgetary Affairs Commission of the NPCSC told the media that on the basis of the previous public opinions solicited and the *Decision on Deepening the Reform*, the Legislative Affairs Commission of the NPCSC was speeding up the revision on the *Budget Law Amendment* draft and would submit it to the NPCSC for deliberation at an appropriate time. Subsequently, words like 'enriching and improving information disclosed' and 'clarifying timetable of disclosure' were included in the third deliberation draft of the *Amendment of the Budget Law*.<sup>63</sup>

During the final group discussion of the NPCSC at the end of August 2014, Yin Zhongqing, the deputy director of the NPC Financial and Economic Committee made three remarks to describe the amendment of the *Budget Law*: "It reflects the guiding principles and governing spirit of the 18<sup>th</sup> National Congress of the CCP and the third plenary session of the 18<sup>th</sup> CCP Central Committee. It coordinates with the overall reform plan of the fiscal and taxation system that was just approved by the CCP central."<sup>64</sup> All discourses above reflect the significant impact of the Party's manifesto onto the legislative process. Even the NPC staff, did not avoid mentioning the leadership of the CCP's manifesto. Especially, for key legislation, like the *Budget Law*, the CCP's manifesto has a great influence on executive-legislative relations in the legislative process. The cooperative mode of the executive-legislative relations is predominated when the CCP pays more attention to certain legislation, as the NPC and the executive work together by following the CCP's manifesto.

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<sup>62</sup> Ibid.

<sup>63</sup> "Amendment of the Budget Law: People in Charge of Moneybag No Longer Unreachable (Yusuan Fa Xiugai: Renin Zhangguan Qiandaizi Yuanwang Buzai Yaobukeji)", *The Procuratorate Daily*, 01/09/2014, Available online: <http://finance.sina.com.cn/china/20140901/075720176137.shtml>. [Accessed 13/3/2015].

<sup>64</sup> Ibid.

### 4.3. discussion

On the one hand, as the budgetary process is political,<sup>65</sup> the amendment of the *Budget Law* is a redistribution of political powers. In terms of drafting power, in 2004 the NPC was in charge of drafting when the amendment of the *Budget Law* was put on the agenda. However, since then, the dominance over the amendment had been gradually transferred to the executive. It went from the NPC-dominant drafting to coalition drafting and eventually to the executive dominance over drafting. Although the executive normally drafts most of economic laws, the NPC initially led on the drafting of the *Budget Law* amendment in the beginning. However, the dominance over drafting was taken by the executive.

On the other hand, the party's influence on the legislative process is significant. The amendment was passed finally by following the party's manifesto at its 18<sup>th</sup> Congress. The NPC deferred the deliberation of the *Budget Law* Amendment bill until the publication of the Party's manifesto at its 18<sup>th</sup> congress, which was in favour of the NPC. It reflects that the CCP's manifesto is a far-reaching influencing factor to the executive-legislative relations in the legislative process. Both the legislature and the executive tried to make the most of it under the given institutions and procedures.

### 5. Conclusion

In the end, in fact, the three modes are co-existed instead of being mutually independent in the Chinese legislative process. The predominant mode varies in different periods, cases, and at different legislative stages. For example, the case study of the *Budget Law* amendment suggests that in the beginning of the legislative process, the cooperative model was the dominant one. The NPC and the State Council worked together to draft the bill. Then, there was a slight move from the cooperative model towards the competing model. When formulating the second bill draft, two drafting groups were organised respectively by the NPC and the State Council to draft two versions of the bill independently. However, when formulating the third draft, there was a move back towards the cooperative model, as the State Council took the lead of drafting. The NPC just played an assistant role. In deliberation, however, the predominant model became the competing one again. The NPC resisted the bill through by employing legislative instruments, such as obstruction tactics and soliciting public opinions. This indicates the

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<sup>65</sup> Aaron B. Wildavsky, *The New Politics of the Budgetary Process*, (New York, NY: HarperCollins Publishers, 1992). p. 430.

competing model, with tension between the legislature and the executive. Ultimately, the NPC managed to get the bill, which is in its own favour passed after four deliberations.

As this example shows, the dominant model could shift from one to another under certain circumstances. However, we still know very little about how and by whom the model-shifts occur. In addition, due to the fact that the three models are ideal types, in reality, they generally do not fit a particular political phenomenon precisely. Usually, the terminology of three models is used to make sense of what is happening and what changes have taken place, and give some shape to the conceptual framework of this research.