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**Capacity-building, Public Participation, and Resilience of an
Authoritarian State: Development of a Responsive Legislature in A
Post-Communist China**

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Abstract

China is fast becoming a hegemon. As pluralism grows its rubber stamp legislature, the National People's Congress, is struggling to cope. Straddling between the party-state structure on the one hand which is reinforcing its traditional fabrics to meet the challenges surging from the omnipotent wave of globalization and the emerging civil society, where netizens are increasingly demanding space beyond the reach of the party-state, on the other, the nominal legislature is destined for revamping. The problem is: Would the newly acquired powers be usurped by the state, lending more weight to the thesis of authoritarian resilience? Or alternatively, would it be reflecting the needs of the society? Furthermore, what does this newly enhanced capacity mean to China's monolithic party-state system?

To answer these questions, we first construct a database containing all the legislative bills passed from 1998 to 2013. Relevant information such as major stakeholders, points of controversy, and the intricate mechanism of deliberation are taken into account. It is found that average time of deliberation for each individual bill is drastically increased. It is evident the NPC is most powerful when bills concern the interests of the general public. Citizen participation and legislative investigation during deliberation is also commonplace. The NPC today is more responsive to the needs coming from both the state as well as the society. In a nutshell, the NPC's capacity has been enhanced not only because it incorporates bureaucratic interests, often competitive amongst themselves, but also because it collects public opinions and recycle them into the lawmaking process. The NPC has become an arena where the interests of the government and the society collide.

Introduction

Lately scholars on authoritarianism have turned their attention to legislature as a platform for interest-distribution among ruling elites and feedback mechanism for public participation. (Bueno de Mesquita et al. 2003; Diamond 2002; Gandhi 2008; Gandhi and Przeworski 2007; Levitsky and Way 2002; 2010; Ottaway 2003) Riding along this wave research on China's legislature has also been gaining momentum. As a result, elections of China's legislative deputies, contending interests in the lawmaking process (Manion 2014a; 2014b; Truex 2014; also see Chao and Chang 2016; Lu, Liu, and Li, 2015), institutionalization and specialization (Chao 2002; Chao and Chang 2014a; 2014b) have found their way into the field of China study. In the wake of the renewed interest, a key issue remains: Is the capacity of the Chinese legislature enhanced? And if it is, what is the implication for the party-state system?

Using workload, legislative relevance, and ability to scrutinize legislation as indicators, this article tries to examine the capacity of China's National People's Congress (NPC). Extracting information from the NPC's Website on the Laws and Regulations (<http://law.npc.gov.cn/FLFG/index.jsp>), 187 laws are scrutinized between the 9th NPC (beginning in 1998) and the 11th NPC (ending in 2018).

Out of the existing, albeit small, publication on the issue of capacity in China's legislature almost all concentrate on the "tactics" such as cooperation with the Chinese Communist Party or fight against the system in order to gain weight, and the target of research is invariably local people's congress. This paper tries to look into the lawmaking process to see if the NPC is functionally capable. We start out by questioning the common practice in which concepts like autonomy and effectiveness have often been borrowed to gauge the usefulness of the Chinese legislature. The paper argues that although the NPC and its Standing Committee (NPCSC) have the supreme powers on paper, it is by no means autonomous. We then try to prove that the NPC is indeed gaining capacity in the lawmaking process. Last, we try to reason why the Chinese legislature has become more capable and what might be expected as a result.

Legislative Power

For legislative scholars, power is always an utmost concern. (Arter 2006; Mezey 1979) When discussing the role of the legislature terms like autonomy and effectiveness often pop up. While the former stresses independence from outside intervention and if

the legislature is able to overcome the gap of asymmetry in information and resources facing the executive branch, the latter attends to the problems of speed in legislation and interest-articulation. (Arter 2006, 248; Carey, Formanek, and Karpowicz 1999; Martorano 2006, 228, note2)

While the notions of autonomy and effectiveness might be potent tools accounting legislative behaviors in western democracy, they may not be as useful in China. First, the NPC might carry some weight in the Chinese political system but it is by no means autonomous. O'Brien (1994; O'Brien and Luehrmann 1998; also see Cho 2002; Xia 2000) coined the term "embeddedness" to imply that China's legislature might be autonomous as long as they are piggybacked by the CCP. Chao and Chang (2014a; also see Chao 2002) contend that the NPC is "long on specialization but short on autonomy." It is true that the CCP has refrained from meddling with legislation and therefore, the Chinese legislative organ is gradually consolidating its power in lawmaking, but it is not independent from the CCP and the state. (Cho 2002, 782; also see Tanner 1994) The fact that the NPC has hardly rejected any bill proposed by the State Council is evidence of its anemic autonomy. As far as we know there is only one case in 1999 when a draft law for the road safety was rejected by the NPC's Standing Committee.¹

There is no doubt that autonomy is not a good indication to judge the work of China's legislature. Neither is effectiveness. For a "rubber stamp" legislature the problem is not about how to make laws more effectively; it is how to slow them down. According to Ji's research, in the mid-1990s on average the NPC and its Standing Committee passed a law every 13 days and the State Council an administrative regulation every 6 days. (Ji 2002, 57) The "dead end" nature of the Chinese lawmaking body as many officials are sent to the not-so-busy legislature before retirement is one of the major reasons contributing to its lack of autonomy.

Instead of power, this paper tries to gauge the "capacity" of the NPC. We believe that a capable legislature is not far from an autonomous one. Relying on the concept of "legislative salience", developed by Ciftci, Forrest, and Tekin (2008), and evidenced by the workload, the legislative relevance, and the ability to scrutinize legislation, we try to come up with some senses with the NPC's capacity. Workload refers to the number of bills reviewed, the more the workload the more capable the legislature. Legislative relevance means the number of laws and bills drafted. The ability to scrutinize

¹ Among the 154 members of the NPCSC, 77 supported the bill. See Chen (2008, 60).

legislation, however, highlights the process especially the deliberation in the making of laws.

NPC's Legislative Power

According to Fish and Kroenig (2009; also see Chernykh, Doyle, and Power 2017), a legislature is powerful if: (a) The legislature alone, without the involvement of any other agencies, can change the constitution; (b) The legislature's laws are supreme and not subject to judicial review; (c) The legislature has the right to initiate bills in all policy jurisdictions; and the executive lacks gatekeeping authority; (d) Any executive initiative on legislation requires ratification or approval by the legislature before it takes effect; that is, the executive lacks decree power. Based on these criteria, the NPC is quite powerful. However, the reality tells a different story.

First, the power to amend the constitution. Article 64 of the PRC constitution stipulates that 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.” Theoretically, the NPC is the sole authority in the change of the constitution. But in reality, constitutionalism is still a long way off in China. Even today, violation of the constitutional code is not unusual as the party constitution often trumps the state constitution. Furthermore, Chinese system is unique in that the NPC, with an enormous size of 3,000 deputies and meets only a couple of weeks a year, is nominal and the real power lies in its 150-odd-member Standing Committee. Although the constitution only endows the NPCSC power “to partially supplement and amend, when the NPC is not in session, laws [and national development plans] enacted by the NPC”, it is the de facto legislature. Take the three NPC periods under review by this paper as examples, among the 187 laws passed only seven “basic laws” were approved by the NPC.

Second, since the NPC is the “highest organ of state power” (article 57) it has the reining power in the sphere of lawmaking and therefore, not subject to judicial review or cowed by the administration for that matter. The constitution further endows the NPC powers to supervise the work of both the administrative branch as well as the judicial branch of the government as officials in those two branches are chosen by the legislature. In theory, the NPC is more powerful than its counterparts in western democracy.

Nevertheless, the NPC's powers are unequivocally curtailed. Take the NPC's

“Five-year Legislation Plan” which is coordinated by the CCP center and its Standing Committee’s “Annual Legislation Plan” as examples. There is little likelihood that a bill is initiated without first finding its way into the plans. Nor is it likely that deputies take the initiative to push through bills of their liking.² According to Yin (2010, 203-205), there is only one case in 1993 when the NPC deputies successfully pushed through a bill to get the constitution amended.

It is worth noting that lately most bills are being reviewed by the NPC without the CCP’s interruption. Cho (2002, 728) discovered that in Shanghai there is no need to seek party approval unless a bill is too controversial or in conflict with the party line. Similar situation is found at the NPC. The NPCSC would seek CCP guidance only when the bills are highly controversial, politicized, or related to vital economic reform policies.³

Last, the State Council is allowed to legislate under NPC’s authorization. Once the NPC comes up with its own version of the law then the statute must cease implementing.⁴ Laws initiated by the State Council has to be ratified by the NPC before it takes effect.

However, despite its statutory powers the NPC is not immune to the administrative infringement. On the contrary, the legislative work is often stymied by the mighty state apparatus. One reason for this asymmetrical relationship is what Squire (1988) calls the “dead-end” nature of the NPC. For many, the NPCSC is the last, and sinecure, appointment before retirement. It is hard for these people to resist influences peddled by their colleagues, or superiors, in the past. (Chao and Chang 2014; Ji 2002, 83; also see Tanner 1999, 106-110) ◦

The above discussion provides strong disincentive for the adopting of the power thesis in analyzing the NPC’s utilities. Capacity thesis might offer a solution.

NPC’s Capacities

Using workload, legislative relevance, and ability to scrutinize legislation, developed by Ciftci, Forrest, and Tekin (2008) to test legislative committee’s salience,

² Interviewed scholar in Shanghai, March 18, 2012.

³ Interviewed scholar in Beijing, April 9, 2012.

⁴ After the Legislation Law was amended in 2015, the requirements for the “authorized legislation” were even stricter. It is stipulated that the “authorized legislation” is to be effective no more than five years and the authorized agency is to report to the authorizer once every six months.

as indicators, this section tries to examine the capacity of the NPC.

First, the workload. In the wake of rehabilitating and reinforcing its legal system after the tumultuous Cultural Revolution the NPC peaked in legislating in the mid-1990s and had since been tapering off. Table 1 shows the declining trend as the 11th NPC passed one third less laws than the 9th NPC.

Table 1 Bills passed by the NPC and the NPCSC

NPC	No. of bills	%	Compared to previous term
9th	75	40.1%	
10th	62	33.2%	-17.3%
11th	50	26.7%	-19.4%
Total	<i>187</i>	<i>100</i>	

Second, the legislative relevance. In order to see the relevancy of the NPC we divide the 187 laws passed in the three NPC periods by the initiators: the NPC, the State Council and others (including the Central Military Commission, the Supreme People’s Court, and the Supreme People’s Prosecutorate). Table 2 shows that the State Council has the lion’s share. However, the NPC is gaining ground in no small way.

Table 2 Laws by initiators

NPC	NPC	State Council	Others	Total
9th	28 (37.3%)	39 (52.0%)	8 (10.7%)	75 (100.0%)
10th	21 (33.9%)	39 (62.9%)	2 (3.2%)	62 (100.0%)
11th	21 (42%)	26 (52%)	3 (6%)	50 (100.0%)
Total	70 (37.4%)	104 (55.6%)	13 (7%)	187 (100.0%)

Last, the ability to scrutinize legislation. Unlike the reading system commonly practiced in western democracies, the NPC adopts a different “three-stage deliberation” system. After an oral representation by the initiator is heard in the plenary session of the NPCSC the bill is forwarded either to a relevant committee or a joint session of concerned committees for review. At this point no revision is allowed. The opinions

gathered from these sessions will then be handed over to the Law Committee and its working force, the Commission of Legislative Affairs, for second review. Representatives from relevant committees and the State Council are invited. At the third stage, the revised bill will then be sent to the NPCSC for a final vote. It is said that this three-stage deliberation process provides the legislative committees of the NPCSC more powers than their counterparts in the West. (Chen 2008, 213; Qiao 2007; Tanner 1995; 1999)

Table 3 shows that while the total time the NPC spent in bill-deliberation has been shortened, the average time for each deliberation has increased. Although on average bills are being deliberated 0.19 times fewer, the average time for deliberation has risen to 0.54 months. On average, it takes 1.77 months for a bill to go through deliberation.

Table 3 Average time of bill-deliberation (unit: month)

NPC	Total time of deliberation	Average time of deliberation	Average frequency of deliberation	Time spent on each deliberation
9	560	7.47 (10.59)	2.65 (0.86)	2.51 (3.27)
10	387	6.24 (7.47)	2.58 (1.02)	2.13 (2.00)
11	462	9.24 (16.36)	2.46 (0.86)	3.05 (4.66)
total	1409	7.53 (11.61)	2.58 (0.91)	2.53 (3.38)

We further divide bill-deliberation into three sub-groups depending on the amount of time spent in the process: new laws, substantial revision and partial revision of existing laws. It is found that the time spent on new laws has increased by a whopping 7.35 months, from 10.09 months at the 9th NPC to 17.44 months at the 11th NPC, a 73% increase. However, the time spent on revised laws, both substantial and partial, has been reduced slightly. (Table 4)

**Table 4 Time consumed in bill-deliberation in the NPC
(unit: month)**

		Types		
		New laws	Substantial revision	Partial revision
NPC	9 th	10.09 (14.02)	6.18 (2.75)	4.97 (6.70)
	10 th	9.42 (9.38)	4.47 (1.36)	1.75 (1.91)
	11 th	17.44 (25.17)	5.80 (2.74)	4.09 (4.17)
<i>Total</i>		<i>11.43</i> <i>(15.90)</i>	<i>5.36</i> <i>(2.33)</i>	<i>3.93</i> <i>(5.23)</i>

In summary, although the number of laws being passed by the NPC has been on the decline, the Chinese legislature is taking a more assertive role in the law-drafting business; it has taken more time for a bill to go through deliberation and this is especially true when it comes to new laws, as it takes up to 70% more time for a new bill to get through deliberation. Evidence has shown that the NPC is gaining capacity.

A More Pluralistic Lawmaking Process

The NPC has been gaining capacity and this is especially conspicuous in the area of law-deliberation. The question is why? In this section, we try to explain this phenomenon from societal as well as systemic point of view.

Due to the increasingly sophisticated policymaking setting (Chao 2014) almost all bills that have taken protracted period of time in the enactment (see Table 5), with the exception of the Law on Choice of Law for Foreign-related Civil Relationships, which is extremely complicated due to its nature, are caused by the entanglement of interests. The Securities Law, the Trust Law, the Social Insurance Law, and the Enterprise Bankruptcy Law are cases in point. The Securities Law (1998) touches jurisdiction shared by a host of government agencies such as the Securities Committee, the State Commission for Economic Restructuring, the State Planning Commission, People's Bank of China, the Ministry of Finance, the Legislative Affairs Office, the Development Research Center, and the Securities Regulatory Commission. The Trust Law (2001) involves the People's Bank of China and the Legislative Affairs Office of the State Council. The Social Insurance Law (2010) involves interests of the Legislative Affairs Office of the State Council, the Ministry of Human Resources and Social Security, and All China Federation of Trade Unions. The Enterprise Bankruptcy Law (2006) affects interests of the Supreme People's Court, the Legislative Affairs Office

of the State Council and the All China Federation of Trade Unions.

Table 5 Laws that have taken the most time in deliberation

Ranking	NPC	Name of the Laws	Starting time to finish deliberation	Months of Deliberation	Committees involved
1	11	Law on Choice of Law for Foreign-related Civil Relationships	2002/12~2010/10	94	Law Committee
2	11	Administrative Compulsion Law	2005/12~2011/12	72	Internal and Judicial Affairs Committee
3	9	Securities Law	1993/8~1998/12	64	Financial and Economic Affairs Committee
4	9	Trust Law	1996/12~2001/4	52	Financial and Economic Affairs Committee
5	10	Law of the People's Republic of China on the Supervision of Standing Committees of People's Congresses at Various Levels	2002/8~2006/8	48	Law Committee
6	9	Law on Practicing Doctors	1995/6~1998/6	36	Education, Science, Culture and Public Health Committee
7	9	Copyright Law	1998/12~2001/10	34	Education, Science, Culture and Public Health Committee
	11	Social Insurance Law	2007/12~2010/10	34	Financial and Economic Affairs Committee
9	10	Enterprise Bankruptcy Law	2004/6~2006/8	26	Financial and Economic Affairs Committee
10	9	Law on Appraising of Environment Impacts	2000/12~2002/10	22	Environment Protection and Resources Conservation Committee
	10	Road Traffic Safety Law	2001/12~2003/10	22	Internal and Judicial Affairs Committee, and Agriculture and Rural Affairs Committee

We further find that the mass organizations, the transitional belt of the party-state system, are getting involved in the making of laws now. The protagonist for the amendment of the Law on the Protection of Rights and Interests of Women in 2005 was the All China Women's Federation. The Law on the Prevention of Juvenile Delinquency

(1999) was co-sponsored by NPC's Internal and Judicial Affairs Committee and the Communist Youth League. The Trade Union Law (2001) was drafted by NPC's Legislative Affairs Commission and the All China Federation of Trade Unions. The Law on the Protection of Disabled Persons (2008) was co-written by the Ministry of Civil Affairs and the China Disabled Persons' Federation.

In the past couple of decades the NPC has developed various methods to help getting feedback from the society in legislation. These innovative measures include (a) *lifa diaoyan*, or sending investigative teams to do field research; (b) *shumian zhengqiu yijian*, or asking government agencies and social groups for opinions on paper; (c) *zuotanhui*, or seminars involving the initiator, relevant state agencies and the public; (d) *lunzhenghui*, or debate sessions so that experts can face off on the issue; (e) *tingzhenghui*, or holding public hearing for the stakeholders and the public (Chao and Chang 2007); and (f) *gongkai zhengqiu yijian*, or publicly seeking opinions through newspapers and social media. (Chen 2008, 221-225)

These innovative measures have made the Chinese lawmaking body more responsive to the needs of the society but there is a side effect: a lengthier process. Take *lifa diaoyan* as an example, an overwhelming majority of the 187 laws passed in the three NPC periods, or 70% of all laws ratified by the 11th NPC, required investigation during some point of time. On average, it takes 0.52 more months for a bill to get through deliberation with investigation. Bills seeking public opinions through *gongkai zhengqiu yijian* is most telling. While there was only a mere 4% of bills going through that process at the 9th NPC, it shot up to 72% at the 11th NPC.⁵ It takes one additional month for the bills to sail through deliberation if *gongkai zhengqiu yijian* is opted. (see Table 6)

Buttressed by these new mechanisms it is clear that the NPC is gradually behaving more like an intermediate and coordinator, instead of a rubber stamper taking orders from the party-state center. The newly revised Legislation Law further consolidates these pluralistic trends in bill-deliberation. If these trends persist, a more assertive NPC might be expected in the future. (Dowdle 1997; Lu, Liu, and Li 2015; Paler 2005) ◦

⁵ A decision was made by the Speaker's Meeting of the NPCSC in 2008 that generally bills are to be made public once it goes through the first stage of deliberation. See (Chen 2008, 221). After the Legislation Law was amended in 2015, it is now stipulated that unless prohibited by the Speaker's Meeting all bills tabled by the NPCSC should be made public and seek opinions. It is further stipulated that the process is not to be shorter than 30 days.

Table 6 Bills passed with legislative investigation and/or public opinion-seeking

Types	% in each period			Time taken in each deliberation (months)
	9th	10th	11 th	
Investigation	56%	43.5%	70%	2.76
No investigation	44%	56.5%	30%	2.24
Opinion-seeking	4%	6.5%	72%	3.25
No opinion-seeking	96%	93.5%	28%	2.31

Conclusion

Using workload, legislative relevance, and ability to scrutinize legislation as indicators, this paper tries to examine the capacity of China’s legislature between the 9th NPC and the 11th NPC. It is found that although the NPC is passing less laws than before, it is a lot more assertive in the law-drafting business. Now it takes much more time for a bill to become a law and this is especially true when it comes to passing of new laws. On average a new law needs 70% more time from start to finish. Evidence has shown that the NPC is gaining capacity. It is argued (O’Brien 1988) that once the capacity is enhanced the lawmaking body is likely to be more attractive to politicians.

It is also found that the Chinese lawmaking body is more responsive to the needs of the society and this opinion-collecting lengthens the lawmaking process. An overwhelming majority of the laws passed in the three NPC periods went through the process of legislative investigation. While there was a mere 4% of bills sought opinions publicly at the 9th NPC, it shot up to 72% at the 11th NPC. It takes one additional month for the bills to get through deliberation if *gongkai zhengqiu yijian* is included.

Drawing on the findings by Lu Xiaobo and his colleagues (Lu, Liu, and Li, 2015) that the NPC is now power-sharing, the paper concludes that cooptation is the strategy adopted by the CCP with the aim of extending the life of authoritarianism. However, the empowerment of the NPC is a double-edged dagger. It is also a choice of the civil society in its fight against the powerful party-state system.

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