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Young Nam Cho

Excerpt

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I

Introduction: Local Legislatures in Chinese Politics

LEGISLATIVE DEVELOPMENT IN CHINA

In February 2001, the Shenyang Municipal People's Congress set off a small political earthquake when it vetoed the annual work report of the Intermediate People's Court. While the Gonghe County People's Congress in Qinghai Province had failed to approve a court annual work report in April 2000, the decision in Shenyang had far greater impact because it took place in the provincial capital of Liaoning rather than a county. Before and during the plenary session, the Chinese Communist Party (CCP) in Shenyang convened temporary meetings, which were attended by all members-cum-deputies (about 80 percent of all deputies). Notably, a resolution was passed at the meeting requiring all Party members to "select candidates whom the Party recommended and approve annual work reports of state organs which the Party considered in advance." Thus, the deputies' assertive rejection of the work report surprised the public as well as state leaders. After the veto, the Court, now under new leadership, implemented comprehensive reforms for six months to satisfy the deputies' demands. Finally, a new work report was submitted and passed at the legislature's temporary meeting, held in August 2001. Thus emerged the "Shenyang Incident" (*Shenyang sijian*), said to be "a first in Chinese constitutional history" and "a remarkable incident in Chinese democratic politics."¹

¹ Shenyangshi renda changweihui (ed.), *Difangrenda daibiao gongzuo shijian yu tansuo* (*Practice and Exploration of Deputy Works in Local People's Congresses*) (Beijing: Zhongguo minzhu fazhi chubanshe, 2002), pp. 231–41.

Similarly, a series of unprecedented incidents involving local legislatures in Guangdong Province have taken place since early in this decade, beginning with an interpellation bill introduced by deputies to the Guangdong Provincial People's Congress in January 2000. Deputies requested the Environmental Protection Bureau of the Provincial Government to explain why it did not suspend work at factories that had caused serious water pollution. Dissatisfied with the replies from the Bureau's vice-director at hearings, the deputies were preparing to submit a motion to discharge the vice-director and requested a meeting with the vice-governor responsible for environmental affairs. Eventually, the government accepted the deputies' request and later replaced the vice-director in order to appease the deputies. A month later, the Standing Committee of the Guangdong legislature refused to ratify two of ten nominees for the directorship of government bureaus recommended by the governor. The chairman was quoted as saying, "Nominees who did not get a majority of votes in legislature could not be approved. It was the result of legislative members' use of democratic power, and nothing was more normal than this." The assertive activities of the legislatures in Guangdong have continued for several years, and they have become known as "Guangdong Phenomena" (*Guangdong xianxiang*).²

The Shenyang Incident and Guangdong Phenomena illustrate the development of Chinese local people's congresses in the reform era as meaningful forces in the Chinese political system, although they cannot represent the ordinary operations of local legislatures across the country. As previous studies indicate, Chinese legislatures, which were frequently known as "rubber stamps" (*xiangpi tuzhang*) both in China and abroad, are no longer appendages to the Party and governments. The National People's Congress (NPC) now has an important influence on national politics, especially on legislation.³ Provincial people's congresses have

² Wu Xi, "Renda gongzuode Guangdong xianxiang" (Guangdong phenomena in works of people's congresses), *Renmin yu quanli* (*People and Power*), No. 10 (2002), p. 39; Yun Zhongqing (ed.), *Renda yanjiu wencui* (*Disijuan*) (*Best Selections of Studies on People's Congresses: Book Four*) (Beijing: Zhongguo fazhi chubanshe, 2004), pp. 613–20.

³ Kevin O'Brien, *Reform without Liberalization: China's National People's Congress and the Politics of Institutional Change* (New York: Cambridge University Press, 1990), pp. 157–79; Murray Scot Tanner, *The Politics of Lawmaking in China: Institutions, Processes, and Democratic Prospects* (New York: Oxford University Press, 1999), pp. 231–52; Ming Xia, *The Dual Developmental State: Development Strategy and Institutional Arrangements for China's Transition* (Aldershot: Ashgate, 2000), pp. 100–35.

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also grown in importance both as local lawmakers and as “information brokers” between the central and local levels by dint of their complex networks.⁴ Some provincial legislatures have even turned down Party nominees for important leadership posts in an attempt to express local discontent over the center’s personnel selections, or to remind the Party leadership not only to observe due legal procedures but also to respect legislatures’ opinions concerning personnel affairs.⁵ There are also claims in China that local legislatures’ supervision of governments is more active and effective than that of the NPC.⁶ These new trends demand more attention on the part of researchers in Chinese politics to local people’s congresses.⁷

⁴ Sen Lin, “A new pattern of democratization in China: The increase of provincial powers in economic legislation,” *China Information*, Vol. 7, No. 3 (winter 1992–93), pp. 27–38; Chien-min Chao, “The procedure for local legislation in mainland China and legislation in national autonomous area,” *Issues & Studies*, Vol. 30, No. 9 (September 1994), pp. 95–116; Xia, *The Dual Developmental State*, pp. 136–77; Ming Xia, “Political contestation and the emergence of the provincial People’s Congresses as power in Chinese politics: A network explanation,” *Journal of Contemporary China*, Vol. 9, No. 24 (2000), pp. 185–214; Roderick MacFarquhar, “Reports from the field: Provincial People’s Congresses,” *China Quarterly*, No. 155 (September 1998), pp. 656–67.

⁵ A survey of 18 out of 30 provincial local people’s congresses around 1988 found that they vetoed 49 of 712 party nominees (a rejection rate of 4 percent). Cai Dingjian, *Zhongguo renmin daibiao zhidu (People’s Congress System in China)* (Revised edition) (Beijing: Falü chubanshe, 1998), pp. 359–60. On other cases, see An Chen, *Restructuring Political Power in China: Alliance and Opposition, 1978–98* (Boulder, CO, and London: Lynne Rienner Publishers, 1999), pp. 97–124; Xia, “Political contestation,” pp. 206–09.

⁶ Quanguorenda changweihui bangongting yanjiushi (ed.), *Zongjie tansuo zhanwang: 8jie quanguorenda gongzuo yanjiu baogao (Summary, Exploration, and Prospects: Investigation Report on the Works of the 8th NPC)* (Beijing: Zhongguo minzhu fazhi chubanshe, 1998), pp. 297–99; Dong Shouan (ed.), *Difang renda gongzuo xintan (New Exploration for the Works of Local People’s Congresses)* (Beijing: Zhongguo minzhu fazhi chubanshe, 1998), pp. 283–84.

⁷ On the organizational development of local people’s congresses, see Kevin O’Brien, “Chinese People’s Congresses and legislative embeddedness: Understanding early organizational development,” *Comparative Political Studies*, Vol. 27, No. 1 (April 1994), pp. 80–109. On the representation roles of local people’s congress deputies, see Kevin O’Brien, “Agents and remonstrators: Role accumulation by Chinese People’s Congress deputies,” *China Quarterly*, No. 138 (June 1994), pp. 359–79. On the vertical relationship between local people’s congresses, see Kevin O’Brien and Laura M. Luehrmann, “Institutionalizing Chinese legislatures: Trade-offs between autonomy and capacity,” *Legislative Studies Quarterly*, Vol. 23, No. 1 (February 1998), pp. 91–108. On the roles of county-level people’s congresses, see Oscar Almén, “Authoritarianism Constrained: The Role of Local People’s Congresses in China” (Ph.D. Dissertation: Göteborg University, 2005).

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STUDYING CHINESE LOCAL LEGISLATURES

This book aims to analyze the role of Chinese local people's congresses in the political system and the developmental process that they have followed to become a meaningful political force in the reform era. It tackles the following two questions. First, what kinds of roles have Chinese local legislatures performed in local politics, and to what degree have they actually exerted influence on the polity, which is largely dominated by the CCP and governments? Second, if Chinese local legislatures, along with the CCP and governments, have become dominant political forces, how have they done so? What obstacles have the legislatures overcome, and what development strategies have they employed to cope with challenges in the process of development?

To this end, this book analyzes the following four subjects. First of all, it investigates two major functions of Chinese local people's congresses in detail: legislation and supervision. When discussing Chinese legislative development, the book's main priorities are to scrutinize the actual roles of local legislatures and the degree of their performance. Legislative development in China is meaningless unless Chinese legislatures carry out the functions that are delegated to them. Like their counterparts in other countries, Chinese legislatures perform four putative roles: legislation, supervision, representation, and regime-maintenance or support.⁸ In the case of representation, the CCP, as the only authoritative actor in the Chinese party-state, claims a monopoly on important policies by representing the opinions and interests of an entire people. That is, the representation role of the legislatures is still marginal. However, if Chinese local legislatures exercise significant power in their other main functions (i.e., legislation and supervision), we can argue that the legislatures have strengthened their roles and thereby become meaningful political

⁸ On the legislative functions, including socialist legislatures, see O'Brien, *Reform without Liberalization*, pp. 157–75; Robert A. Packenham, "Legislatures and political development," in Allen Kornberg and Lloyd D. Musolf (eds.), *Legislatures in Developmental Perspective* (Durham, NC: Duke University Press, 1970), pp. 521–82; David Close, "Introduction: Consolidating democracy in Latin America," in David Close (ed.), *Legislatures and the New Democracies in Latin America* (Boulder, CO: Lynne Rienner Publishers, 1995), pp. 1–15; Michael L. Mezey, "The functions of legislatures in the Third World," in Gerhard Loewenberg (ed.), *Handbook of Legislative Research* (Cambridge, MA: Harvard University Press, 1983), pp. 733–72; Daniel N. Nelson, "Editor's introduction: Communist legislatures and communist politics," *Legislative Studies Quarterly*, Vol. 5, No. 2 (May 1980), pp. 161–73; Peter Vanneman, *The Supreme Soviet* (Durham, NC: Duke University Press, 1977), pp. 151–75.

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players. Thus, investigating Chinese local legislatures' lawmaking and supervisory roles is a core part of this research.

This book also examines the role fulfillment of deputies to Chinese people's congresses. Legislative members in all countries are required to represent their constituents in the arenas of policymaking, budget-allocation, and service-provision or errand-running. The deputies to the NPC and local legislatures, of which there were more than three million in the 1990s, are no exception. At least, as "people's deputies," they should try to champion some kind of public interest, even though they cannot accomplish policymaking and budget-allocation roles. In fact, the role fulfillment of Chinese legislative members has changed from "hand-raising machines" to "supervisors and reflectors" since the early 1990s. Also, the ordinary deputies have made a contribution to the development of local legislatures. For these reasons, this study examines the roles of deputies.

Furthermore, the book analyzes relations between Chinese local legislatures and social organizations. With the introduction of a market economy, interest differentiation and competition between social groups in China has intensified. As a consequence, social organizations that claim to represent the interests of specific social groups have increased, and their activities have gradually strengthened. This in turn has caused shifts in state-society relations. Relations between local legislatures and social organizations are part of these changes. As laws have become an important tool for both state and society in resolving conflicts and redistributing interests, social organizations have increasingly sought to participate in the lawmaking process of legislatures in order to protect their rights and interests. Local legislatures also have encouraged social organizations to engage in lawmaking in order to supplement their lack of personnel and organizational capabilities. As a result, relations between legislatures and social organizations have evolved in a manner that differs from ties between the Party/governments and social organizations. This new set of relations has increasingly affected legislative activities.

Finally, this book delves into the uneven development of Chinese local legislatures and the main factors that cause the differences. As previous studies on villagers' committees demonstrate, there are significant differences in the dissemination of villagers' democratic elections from region to region. Similarly, legislative activities indicate palpable disparities between local legislatures even within the same province, not to mention between legislatures in different provinces. For instance, in the Tianjin area, one district people's congress has actively carried out

legislative oversight using strict new measures over the district government and court, while a neighboring district legislature has not shown any interest in effective supervision over state organs. This phenomenon is ubiquitous across the country, and we need to explore this matter in order to ascertain the process and characteristics of legislative development in China.

Based on these analyses, the book posits the following arguments: Most important of all, against conventional wisdom suggesting that Chinese local legislatures are nothing but “rubber stamps,” Chinese local legislatures have strengthened lawmaking and supervisory roles and thereby become important political forces in the Chinese political system, along with the CCP and governments. Rather than democratic demands and pressure from below, the introduction of a market economy and legalization policy by the Party leadership on a national level have been the primary determinants of the enhanced status and intensified roles of Chinese legislatures. In addition, Chinese local legislatures have employed sophisticated development strategies targeting different objectives: getting the support of – rather than autonomy from – the Party, cooperation rather than confrontation with governments, and aggressive engagement in courts. They have also used a mobilization strategy to encourage social organizations and the public to participate in legislative activities. Chinese legislatures have had to utilize savvy development strategies chiefly due to their lower political status in the Chinese political system vis-à-vis governments, in addition to disadvantageous conditions such as their lack of legislative experience, poor material and personnel support, and defective legal and institutional assistance. Finally, local legislatures have developed unevenly, even within given administrative units. Political leadership of both the Party and legislatures, not the level of economic development, is the most important determinant of these differences.

METHODOLOGY

A REVIEW OF PREVIOUS STUDIES

Various analytical methods have been applied to the study of Third World legislatures. Functional and structural approaches (or the structural-functional approach) are most common. Studies on Chinese legislatures are no exception. When Kevin O'Brien analyzes the historical changes of the NPC and its major functions, he adopts an “integrated

historical-structural approach,” a variation of the structural approach.⁹ The structural-functional approach is useful in exploring established legislative systems because of its focus on main functions, legislative structures, and interactions between legislatures and other state organs, especially the executive branch.

Similarly, this research adopts the structural-functional approach in order to investigate the actual functions and development processes of Chinese local legislatures. For instance, this book analyzes the main functions of Chinese local legislatures, such as legislation, supervision, and representation, as the functional approach prescribes. Furthermore, this study closely investigates the legislatures’ relationships and interactions with other state organs of local governments and courts as well as the Party, based on the presumptions of the structural approach.

At the same time, however, the structural-functional approach has limitations when applied to studies on rapidly changing legislatures like Chinese people’s congresses; that is, it cannot properly explain why certain legislative institutions develop in specific ways, and which factors are behind these developments. In particular, this approach likely fails to adequately elucidate informal political relations, which significantly influence the operation of legislatures but rarely surface in formal institutions. For these reasons, this study employs three complementary perspectives (i.e., marketization and legalization, actual power relations, and path dependence) to make up for the weak points of the structural-functional approach. This is discussed in more detail below.

Other scholars of Chinese legislatures have selected certain analytical approaches suitable for their research topics and purposes. For example, Murray S. Tanner investigates legislative politics in the NPC by employing a decision-making model approach, and proposes a garbage

⁹ On the structural-functional approach and other methodologies in legislative studies, see O’Brien, *Reform without Liberalization*, pp. 8–11; Nelson W. Polsby, “Legislatures,” in Fred I. Grenstein and Nelson W. Polsby (eds.), *Handbook of Political Science*, Vol. 5 (Reading, MA: Addison-Wesley, 1975), pp. 258–59; Mezey, “The functions of legislatures in the Third World,” pp. 734–35; Leroy N. Rieselbach, *Congressional Politics: The Evolving Legislative System* (Boulder, CO: Westview Press, 1995), pp. 17–36; David M. Olson and Philip Norton, “Legislatures in democratic transition,” in David M. Olson and Philip Norton (eds.), *The New Parliament of Central and Eastern Europe* (London: Frank Cass, 1996), p. 6, table 1; David M. Olson and Michael Mezey, “Parliament and public policy,” in Olson and Mezey (eds.), *Legislatures in the Policy Process: The Dilemmas of Economic Policy* (Cambridge: Cambridge University Press, 1991), pp. 6–7; David M. Olson, *Democratic Legislative Institutions: A Comparative View* (Armonk, NY: M.E. Sharpe, 1994), pp. 132–43.

can model as the most appropriate one for Chinese legislative politics.¹⁰ Tanner's approach may help us probe the politics of lawmaking in local legislatures, but we need more than this when analyzing the supervisory functions and overall developmental process of legislatures.

Meanwhile, Ming Xia examines the developmental process of provincial-level legislatures by using a network approach,¹¹ and An Chen similarly explores the development of county-level legislatures in terms of a checks-and-balances perspective.¹² Xia's approach provides insights insofar as it reveals the survival strategies of local legislatures, and Chen's perspective highlights the strategic thinking of the Party's top leadership about strengthening local legislatures in the 1980s. However, both these approaches have limitations. Xia's network approach pays much more attention to legislative leadership's strategic calculations than to the organizations' collective efforts to institutionalize lawmaking and supervisory mechanisms. Likewise, Chen's checks-and-balances view likely overestimates the strengthening of legislatures' roles in local politics. A system of checks and balances has yet to emerge in the Chinese party-state, where local legislatures cannot monitor local Party committees because the CCP dominates legislatures in terms of personnel, organization, and policy.

THREE PERSPECTIVES OF THIS RESEARCH

As mentioned previously, in addition to the structural-functional approach, this book adopts three perspectives when analyzing the roles of local legislatures in the Chinese political system and their developmental process: (1) marketization (*shichanghua*) and legalization (*fazhibua*), (2) actual power relations, and (3) path dependence. The first perspective is indispensable to understanding which specific roles of legislatures (such as legislation and supervision) have been strengthened and which others (like policymaking and representation) have not been so stringently reinforced. An actual power relations perspective provides a far better basis to examine the political circumstances of Chinese local legislatures and their development strategies. Finally, path dependence

¹⁰ Tanner, *The Politics of Lawmaking in China*, pp. 12–40.

¹¹ Xia, *The Dual Developmental State*, pp. 144–72; Xia, “Political contestation,” pp. 185–214; Ming Xia, “Informational efficiency, organizational development and the institutional linkages of the provincial people's congresses in China,” *Journal of Legislative Studies*, Vol. 3, No. 3 (Autumn 1997), pp. 10–38.

¹² Chen, *Restructuring Political Power in China*, pp. 1–21.

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is helpful in understanding the historical conditions and processes of legislative development in China. Although the three perspectives are closely interrelated, for the convenience of explanation, they are examined separately below.

The perspective of marketization and legalization helps us to understand the background of and processes by which the roles of Chinese local legislatures have been reinforced. Top Party leadership in the 1980s, for various reasons, began to take note of the legislative systems that had actually stopped operating for more than a decade. The drastic events of the Cultural Revolution (1966–76) brought home to reformist leaders like Deng Xiaoping the catastrophe of “rule by men” (*renzhi*). As a way to prevent the recurrence of those political disasters, Party leaders introduced “rule by law” (*fazhi*), which entailed the reconstruction of the Party/state institutions and the establishment of a functioning legal system. This led to the recovery of legislative systems in the 1980s. In addition, Party leadership had to strengthen both legislatures and elections in order to respond to widespread public doubt and criticism of socialism after the Cultural Revolution.¹³ Besides, the most senior legislative leaders such as Peng Zhen and Wan Li have strived to buttress legislatures and thus consolidate their political power bases, pursuing their personal beliefs at the same time.¹⁴

The most important factors behind the move toward strengthening Chinese legislatures, however, were the introduction of a market economy and implementation of legalization policy. It is said in China that “the market economy is a rule of law economy.” The introduction of a market economy urged China to establish a proper legal system to manage economic activities in the marketplace and to regulate new economic agents, including foreign companies and private entrepreneurs. Furthermore, only by establishing a legal system that could guarantee the interests of foreign investors and control their illegal activities could China attract larger inflows of foreign direct investment and protect Chinese economic interests.¹⁵ Chiefly due to these considerations, the

¹³ O'Brien, *Reform without Liberalization*, pp. 126–27; Cai, *People's Congress System in China*, pp. 76–77.

¹⁴ Pitman B. Potter, “Curbing the party: Peng Zhen and Chinese legal culture,” *Problems of Post-Communism*, Vol. 45, No. 3 (May/June 1998), pp. 17–28; Pitman B. Potter, *From Leninist Discipline to Socialist Legalism* (Stanford: Stanford University Press, 2003).

¹⁵ Quanguorenda changweihui bangongting yanjiushi (ed.), *Renmin daibiao dahui chengli sishi zhounian jinian wenji* (*Papers on Commemorating the 40th Anniversary of People's Congresses*) (Beijing: Zhongguo minzhu fazhi chubanshe, 1995), p. 103;

lawmaking roles of the NPC and local legislatures have been markedly invigorated since the 1980s.

Meanwhile, since the early 1980s, the CCP has continued to implement the rationalization of governance (but not yet liberalization or democratization). Legalization policy (i.e., “rule by law” before the mid-1990s and “rule of law” since then) has been a key part of rationalization. Legalization refers to the establishment of a comprehensive system of enacting laws (*lifa*), enforcing laws (*zhifa*), and protecting laws (*shoufa*).¹⁶ This policy necessitated the strengthening of the lawmaking and supervisory functions of Chinese legislatures, because a sound legal system cannot be established without a stronger lawmaking role of legislatures. Furthermore, the incomplete implementation of laws by governments and unfair application of laws by courts cannot be prevented without a stronger supervisory role of legislatures. In short, marketization and legalization have bolstered the lawmaking and supervisory roles of Chinese legislatures.

As previous research on Third World legislatures notes, examination of a legislature's structure and functions requires investigation not only into the legislature itself but also into interactions between the legislature and its political system. This is necessary because the specific functions that a legislature performs and the level of its performance tend to be determined less by the legislature itself than by the political system to which it belongs.¹⁷ This is also the case in China, where the party-state has strongly influenced legislatures.

Legal or formal relations among the Party, legislatures, and governments come in conflict with actual power relations due to the peculiarity of the Chinese political system, one-party rule. Regarding Party-legislature relations, the Chinese Constitution describes the CCP as a “political party” that is required to act within the limits of the

Tao-tai Hsia and Wendy I. Zeldin, “Recent legal development in the People's Republic of China,” *Harvard International Law Journal*, Vol. 28, No. 2 (Spring 1987), p. 256; Mary E. Gallagher, *Contagious Capitalism: Globalization and the Politics of Labor in China* (Princeton, NJ: Princeton University Press, 2005), pp. 98–132.

¹⁶ Cai Dingjian, *Zhongguo xianfa jingjie (An Interpretation of Chinese Constitution)* (Beijing: Zhongguo minzhu fazhi chubanshe, 1996), p. 113.

¹⁷ Jean Blondel, *Comparative Legislature* (Englewood Cliffs, NJ: Prentice-Hall, 1973), p. 26; Marvin G. Weinbaum, “Classification and change in legislative system: With particular application to Iran, Turkey, and Afghanistan,” in G. R. Boynton and Chong Lim Kim (eds.), *Legislative Systems in Developing Countries* (Durham, NC: Duke University Press, 1975), p. 35; Martin C. Needler, “Conclusion: The legislature in a democratic Latin America,” in Close, *Legislatures and the New Democracies in Latin America*, p. 158.