

ON THE COMPOSITION OF THE DEPUTIES IN THE
NATIONAL PEOPLE’S CONGRESS OF CHINA

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ON THE COMPOSITION OF THE DEPUTIES IN THE NATIONAL PEOPLE'S CONGRESS OF CHINA

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The composition of the deputies in the National People's Congress of China shows reliance on the principle of formal proportionality based on the national census and substantial representation based on the inclusion of rural areas, minorities and other groups which are a statistically smaller portion of the population. However the quota system based on these principles of representation cannot mitigate against the overrepresentation of government officials and the increasing elitism of the deputies. Yet these issues are nominal compared to the forging of closer political bonds between the representatives and the represented. The author believes that the correlation between the representatives and the represented may be strengthened by moving towards the direct election of the deputies of the National People's Congress, thereby placing the constitutionality of the National People's Congress as the highest organ of state sovereignty on a firmer foundation.

On March 14th 2010, the eleventh National People's Congress amended the 1979 Electoral Law of the People's Republic of China for the National People's Congress and Local People's Congresses for the fifth time, removing the one-quarter clause in favor of apportioning deputies at the national and local levels based on rural and urban population.

Under the one-quarter clause prior to the amending of the Electoral Law, every rural deputy represented four times as many people as the urban deputy represented. Article 14 and 16 of the amended Electoral Law states that "[t]he number of deputies to the National People's Congress shall be allocated by its Standing Committee on the basis of the population of each province, autonomous region and municipality directly under the central government, and in accordance with the principle that each deputy represents the same number of urban or rural people and the requirement guaranteeing an appropriate number of deputies for every region, ethnic group and sector of society".

This new requirement clarifies two principles for apportioning deputies for national and local level deputies: firstly, each deputy represents the same number of urban or rural people, i.e., the principle of formal proportionality; and secondly, that regions, ethnic groups or sectors of society with lower population otherwise incapable of being represented be afforded representation, i.e., the principle of substantive representation.

It is obvious that the principles of formal proportionality and substantive representation conflict; if formal proportionality is applied across the board, then regions, ethnic groups or sectors of society with lower populations will be denied representation; and if

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substantive representation is relied on extensively, then regions with higher proportions of population will be denied adequate representation. The author will now first examine the effects of these two principles on the apportionment of deputies of the National People's Congress.

I. APPORTIONMENT OF THE NATIONAL PEOPLE'S CONGRESS DEPUTIES

A. Proportionality and representativeness of rural and urban deputies

People's Congress deputies at the county and rural levels are elected directly, while deputies above the county level are elected through representatives. Thus the one-quarter clause impacts direct elections and indirect elections differently.

In direct elections, the one-quarter clause affects the value of each vote, as the vote of a rural voter is not the same worth as the vote of an urban voter. The differing value of the votes means that the deputies voted in by a majority of the population are not necessarily a majority of the deputies representing the population. For example, if a county has 1,000,000 residents of which 200,000 are urban voters and 800,000 are rural, according to the one-quarter clause there would be the same number of deputies representing the urban voters as the rural voters. If the county had 300,000 urban voters and 700,000 rural voters, then the deputies representing the urban population would in fact outnumber the deputies representing the rural population. The result is that a majority of the deputies do not represent a majority of the population, which is inconsistent with formal proportionality.

In indirect elections representative democracy causes the one-quarter clause to affect not the value of each vote, but the apportioning of deputies between different voting units. In the National People's Congress, apportionment of the deputies is based on population and the proportion of rural and urban voters in the provinces, autonomous areas, and the municipalities under the central government. For example, if province A and municipality B each have a population of 12,000,000; if province A being an important agriculture area has a rural population of 9,600,000 and an urban population of 2,400,000; if the rural population elects one deputy for every 960,000 people, and the urban population elects one deputy for every 240,000¹, then province A would have twenty

¹ Such a standard has been adopted by the Tenth National People's Congress and the Eleventh National People's Congress to decide the number of deputies elected from each province, autonomous region or municipality directly under the Central Government. *See generally* DijiJie Quanguo Renda Diwuci Huiyi Guanyu DishiJie Quanguo Renmin Daibiao Dahui Daibiao Minge He Xuanju Wenti De

deputies in the National People's Congress. Municipality B being highly urbanized has a rural population of 2,400,000 and an urban population of 9,600,000, and would have forty two deputies in the National People's Congress. Even though province A and municipality B have the same population, the one-quarter rule causes municipality B to have over double the number of deputies as province A. The result is that having a higher percentage of urban residents increases representation in the National People's Congress, which is inconsistent with formal proportionality.

The use of different proportions for allocating deputies for rural and urban deputies is rooted in the history of the Electoral Law. On February 11th 1953, Deng Xiaoping wrote in the explanation to the draft edition of China's first Electoral Law that "cities are the political, economic, and cultural heart of the nation; they are where the workers are and where industry is. The apportioning of rural and urban deputies according to different proportions reflects the leadership role that workers take in this nation and signposts our nation's advancement towards industrialization. Therefore, this regulation conforms to our nation's political system and reality; it is absolutely necessary and absolutely correct."² The purpose of the legislation is clear in that decreasing the number of people the urban deputy represents allows urban areas to gain greater representation in the different levels of the People's Congresses, so as to increase representation of urbanites and workers, so that the nation might more easily move towards industrialization, urbanization, and modernization. The 1953 Electoral Law stated that "[e]ach province should elect deputies for the National People's Congress; every eight hundred thousand people should be apportioned one deputy. Municipalities under the central government and industrialized cities

Jueding (第九届全国人大第五次会议关于第十届全国人民代表大会代表名额和选举问题的决定) [Decision of the Fifth Session of the Ninth National People's Congress on the Number of Deputies to the tenth National People's Congress and on the Election of the Deputies] (promulgated by the Ninth Nat'l People's Cong., Mar. 15, 2002, effective Mar. 15 2002) art. 2 (China) ("One deputy shall be elected from among 960,000 persons in rural areas and one from among 240,000 persons in urban areas."); Dishijie Quanguo Renda Diwuci Huiyi Guanyu Dishiyijie Quanguo Renmin Daibiao Dahui Daibiao Minge He Xuanju Wenti De Jueding (第十届全国人大第五次会议关于第十一届全国人民代表大会代表名额和选举问题的决定) [Decision of the Fifth Session of the tenth National People's Congress on the Number of Deputies to the eleventh National People's Congress and on the Election of the Deputies] (promulgated by the tenth Nat'l People's Cong., Mar. 16, 2007, effective Mar. 16 2007) art. 2 (China) ("The number of deputies to the Eleventh National People's Congress to be elected from each province, autonomous region or municipality directly under the Central Government shall be the same as that to the Tenth National People's Congress.").

² Deng Xiaoping, *Guanyu Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Ji Defang Geji Renmin Daibiao Dahui Xuanjufa Caoan De Shuoming* (关于《中华人民共和国全国人民代表大会及地方各级人民代表大会选举法》草案的说明) [Explanation of the Draft of Electoral Law of the People's Republic of China for the National People's Congress and Local People's Congresses] (Feb. 11, 1953), 21GWY.COM, <http://www.21gwy.com/ms/1577/a/0360/430360.html>.

under the province with a population exceeding five hundred thousand should elect one deputy for every hundred thousand people.” As urban deputies represented one-eighth the population of rural deputies, this was known as the one-eighth clause.

According to census data, in 1953 the proportion of urban to rural population was 13:87, which according to the one-eighth clause would have guaranteed that deputies from urban areas would slightly outnumber deputies from rural areas. When the Electoral Law was amended in 1995 and the one-eighth clause was changed to the one-quarter clause, the proportion of urban to rural population was 29:71, which according to the one-quarter clause would have guaranteed that deputies from urban areas would outnumber deputies from rural areas. China has since urbanized quickly, as shown by the Sixth National Census of 2010, which shows the proportion of urban to rural population at 49.68: 50.32. Even without the one-quarter clause it can be guaranteed that deputies from urban areas outnumber the deputies from rural areas, therefore there is no reason to continue sacrificing formal proportionality on the altar of increased representation for urban areas. It is historically apt to repeal the one-quarter clause in 2010.

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Table 1. Proportion between population represented by rural deputy and population represented by urban deputy

Electoral Law	Urban/Rural Ratio	National People's Congress	Provincial, Autonomous Region People's Congress	Autonomous State, County, and Autonomous County	Municipality under the Central Government, Municipality, and Municipal District People's Congress
1953	13:26:86.74	8	More than	More than	Municipality People's Congress deputies should represent more people when from outlying districts as opposed to central districts
1979	-	8	5	4	Deputies from villages should represent more people than deputies from municipal deputies
1982	20.6:79.4	8	5	4	See above
1986	-	8	5	4	See above
1995	28.85:71.15	4	4	4	See above
2004	-	4	4	4	See above
2010	49.68:50.32	1	1	1	1

1953, 1982, and 2010 urban/rural ratio data is from the First National Census of 1953, the Third National Census of 1982, and the Sixth National Census of 2010, respectively. The 1995 urban/rural ratio data is from a 1995 1% random sampling by the National Bureau of Statistics of China; the official report may be found at <http://www.stats.gov.cn/tigb/rkpcgb/index.htm> (last accessed August 1st 2012).

The apportioning of National People's Congress or Local People's Congresses deputies according to differing proportions for rural and urban populations disregards the principle of formal equality required in by formal proportionality. However if the purpose was to increase the population represented, than the breach of formal equality completed in the name substantive equality. Besides, the prerequisite to increasing representation of the urban population in the six iterations of the Electoral Law between 1953 and 2004 was that the deputies from urban areas should represent not only the interests and will of the urban population, but the interests

and will of the population as a whole, which included the rural population.

B. Apportionment in regard to population, race, and geographical areas

Prior to the removal of the one-quarter clause, deputies for provinces, autonomous regions, and municipalities under the central government were apportioned based on rural population, urban population, and the increased quota.³ After the one-quarter clause was annulled, apportionment of deputies was based on the minimum quota, the quota for population, and the quota for other included deputies. "Decision of the Fifth Session of the Eleventh National People's Congress on the Number of Deputies to the Twelfth National People's Congress and on the Election of the Deputies" states that "the quota for deputies representing provinces, autonomous regions, and municipalities under the central government at the Twelfth National People's Congress should be based on the population quota, the minimum quota, and the quota for other included deputies." The minimum quota for all thirty-one provinces, autonomous regions and municipalities under the central government were eight deputies; the population quota was two thousand deputies, which was approximately one deputy for every six hundred and seventy thousand people.⁴ It also stated that "the quota for other included deputies representing provinces, autonomous regions, and municipalities under the central government at the Twelfth National People's Congress will be apportioned by the Standing Committee of the National People's Congress according to the law."

When compared with the Draft of the Plan for the Apportionment of Deputies for the Twelfth National People's Congress promulgated by the Standing Committee of the Eleventh National People's Congress on April 27th 2012, the actual number of deputies apportioned for thirty-one provinces, autonomous regions, and municipalities under the central government is 2419. After subtracting the minimum quota of 248 deputies and the population quota of 2000 deputies, the remaining deputies is the quota for other included deputies of 171.

However if we use population data from the Sixth National Census of 2010, divide it by six hundred seventy thousand for the population quota, and add the minimum quota of eight deputies per province, autonomous region, and municipality under the central

³ 1 SHI WEIMIN & LIU ZHI, JIANJIE XUANJU (间接选举) [INDIRECT ELECTION], 193-194 (2004).

⁴ According to the 2010 national census, the total population is 1,339,724,852, which divided by 2000 is about 669,862.

government, and compare it to the actual number of deputies apportioned in the Draft provided by the Standing Committee, the numbers do not match. The actual apportioned number of deputies in twenty-seven provinces, autonomous regions, and municipalities under the central government was equal to or larger than the sum of the minimum quota and the population quota. Of these Liaoning, Heilongjiang, Xinjiang, Hubei, Shandong, Henan, and Yunan had double-digit increases. However four provinces, autonomous regions, or municipalities under the central government had an actual apportioned number of deputies fewer than the sum of the minimum quota and the population quota; Guangdong had fourteen deputies fewer and Zhejiang had six fewer.

The legitimacy of the Standing Committee of the National People's Congress in apportioning the quota for other included deputies according to the law to increase representation should not be overly questioned as the law clearly affords such power; however the decrease in the deputies representing four areas is difficult to explain. One possibility is that the Standing Committee did not use the Sixth National Census of 2010 to apportion the population quota, as the number of deputies for Guangdong and Zhejiang do not match census data from 2010. This explanation is troubling in that the First National Census of 1953 was to provide data for the first general elections in China; and even today the National Census represents the most accurate census data, and as such the Standing Committee would have no reason to utilize a different source.

Table 2. Apportionment of Deputies for the Twelfth National People's Congress

Area	Population	Population Quota	Minimum Quota	Actual Quota	Other Included Deputies	Minority Deputies Quota
National	1332810869	2000	248	2419	171	320
Beijing	19612368	29	8	42	5	2
Tianjin	12938693	19	8	33	6	3
Hebei	71854210	108	8	116	0	3
Shanxi	35712101	54	8	61	-1	0
Neimenggu	24706291	37	8	53	8	21
Liaoning	43746323	66	8	94	20	15
Jilin	27552815	41	8	58	9	9
Heilongjiang	38313991	57	8	84	19	8
Shanghai	23019196	35	8	50	7	1
Jiangsu	78660941	118	8	138	12	1
Zhejiang	54426891	82	8	84	-6	1
Anhui	59500468	89	8	104	7	2
Fujian	36894217	55	8	62	-1	2

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Jiangxi	44567797	67	8	76	1	0
Shandong	95792719	144	8	162	10	3
Henan	94029939	141	8	159	10	5
Hubei	57237727	86	8	108	14	7
Hunan	65700762	99	8	110	3	12
Guangdong	104320459	157	8	151	-14	2
Guangxi	46023761	69	8	85	8	50
Hainan	8671485	13	8	21	0	6
Chongqing	28846170	43	8	55	4	4
Sichuan	80417528	121	8	137	8	14
Guizhou	34748556	52	8	66	6	25
Yunnan	45966766	69	8	87	10	46
Xizang	3002165	5	8	17	4	14
Shanxi	37327379	56	8	65	1	1
Gansu	25575263	38	8	49	3	9
Qinghai	5626723	8	8	18	2	9
Ningxia	6301350	9	8	18	1	8
Xinjiang	21815815	33	8	56	15	36

Population data from the Sixth National Census of 2010 as provided by the National Bureau of Statistics of China (<http://www.stats.gov.cn/tjsi/pcsj/rkpc/6rp/indexch.htm>). Actual quota numbers from “Decision of the Fifth Session of the Eleventh National People’s Congress on the Number of Deputies to the Twelfth National People’s Congress and on the Election of the Deputies”. Minority deputies quota from the Plan for the Apportionment of Minority Deputies of the Twelfth National People’s Congress, promulgated by the twenty-sixth meeting of the Standing Committee of the Eleventh National People’s Congress on April 27th 2012.

With the number of National People’s Congress deputies maintained below 3,000, the removal of the one-quarter clause will affect the number of deputies from different areas. A rational conclusion would be that areas with a higher urban population will have fewer deputies, while rural areas will see a higher number of deputies.

Historically, this is not the first time it has occurred. In 1995 the Eighth National People’s Congress made the third revision of the Electoral Law, changing “each rural delegate will represent eight times the number of people as compared to each urban delegate” to “each rural delegate will represent four times the number of people as compared to each urban delegate”, thereby exchanging the one-eight clause for the one-quarter clause. When comparing the deputies from the Eighth National People’s Congress convened under the one-eighth clause as opposed to the deputies from the Ninth National People’s Congress, Liaoning, Heilongjiang, Jilin and Zhejiang Province saw a substantial decrease in the number of

deputies; of these provinces, three are traditionally dominated by urban industrial centers, and the decrease in the number of deputies was directly related to the imposition of the one-quarter clause. Provinces which saw the number of deputies increase were Henan, Jiangsu, Hubei, Hebei, Hunan and Anhui, which were predominantly rural and had a larger percentage of farmers. Municipalities such as Beijing, Shanghai and Tianjin had fewer deputies, but the difference was not as substantial. Autonomous regions and provinces such as Yunan and Guizhou with a higher percentage of minorities also did not see substantial change in the number of deputies.⁵

The chart below shows that following the abolishing of the one-quarter clause, the more industrial provinces of Heilongjiang, Liaoning and Jilin recorded a drop in the number of deputies, yet at the same time the number of deputies representing Hubei, Jiangsu and Shandong decreased; this was different from the abolishing of the one-eighth clause in 1995. The municipalities of Beijing, Shanghai, Tianjin and Chongqing returned relatively fewer deputies, but there was not a substantial difference. The autonomous regions of Ningxia, Xizang, Neimenggu, Xinjiang and Guangxi registered increased numbers of deputies.

Table 3. Apportionment of Deputies for the Eleventh and Twelfth National People's Congresses

Area	Eleventh National People's Congress	Twelfth National People's Congress
Beijing	46	42
Tianjin	36	33
Hebei	111	116
Shanxi	60	61
Neimenggu	53	53
Liaoning	103	94
Jilin	63	58
Heilongjiang	93	84
Shanghai	55	50
Jiangsu	145	138
Zhejiang	78	84
Anhui	104	104
Fujian	56	62
Jiangxi	73	76
Shandong	168	162
Henan	153	159
Hubei	114	108

⁵ LIU ZHI, SHUJU XUANJU (数据选举) [STATISTICS STUDY ON ELECTION], 58-59 (2001).

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Hunan	109	110
Guangdong	151	151
Guangxi	83	85
Hainan	15	21
Chongqing	56	55
Sichuan	137	137
Guizhou	60	66
Yunnan	86	87
Xizang	17	17
Shanxi	63	65
Gansu	43	49
Qinghai	17	18
Ningxia	15	18
Xinjiang	56	56

Prior to the removal of the one-quarter clause, the apportionment of deputies was based on deputies for rural population, deputies for urban population and other included deputies. The 'other included deputies' were present to resolve issues of underrepresentation for areas, minorities and other groups. In other words, the purpose of the 'other included deputies' was to increase substantial representation so as to mitigate against the sidelining of smaller groups under formal proportionality.

'Other included deputies' may be broken down into three categories. The first category comprises areas with extremely low population such as Hainan, Xizang and Qinghai which have fewer than fifteen deputies if apportioned solely on population; areas with fewer than fifteen deputies are apportioned fifteen deputies, so the Ninth National People's Congress included 22 more deputies (1 for Hainan, 11 for Xizang, 5 for Qinghai and 5 for Ningxia), and the Tenth National People's Congress included 21 more (1 for Hainan, 11 for Xizang, 5 for Qinghai and 4 for Ningxia). The second category are additional deputies for minorities with small populations and areas with a high percentage of minorities but with small populations; the Ninth National People's Congress included 35 more deputies for 35 minorities with populations under 440,000, and included 35 more deputies for the provinces of Guangxi, Guizhou, Yunan and Xinjiang which have a smaller population and a higher percentage of minorities; The Tenth National People's Congress included a total of 68 more deputies for this category. The third category comprises additional deputies for municipalities with a coalescing of socially important individuals: the Ninth National People's Congress included 10 more deputies each for Beijing, Tianjin and Shanghai; the Tenth National People's Congress added an additional 3 deputies for Chongqing, for a total of 33 for this

category. The total number of 'other included delegates' for the Ninth and Tenth National People's Congress was 122. 'Other included deputies' are present to ensure greater representation of minorities and municipalities with a coalescing of socially important individuals.⁶

After abolishing the one-quarter rule, the 2010 Electoral Law added the concept of a basic number of deputies, which provides 8 deputies to each area regardless of population. Based on the apportionment of the deputies for the Twelfth National People's Congress, the four areas with small populations, namely Hainan, Xizang, Qinghai and Ningxia, all exceed fifteen deputies following the addition of the basic number of deputies. Thus, the concept of a basic number of deputies has more or less resolved the issue of underrepresentation of smaller areas.

Aside from the non-application of proportional representation and rather the application of substantial representation to areas with small populations, the deputies for minorities were never based on their populations. Deng Xiaoping stated in the explanation to the draft of the 1953 Electoral Law that "the population of all the minorities is approximately one-fourteenth of the national population. The Draft states that the number of minority deputies should be 150, and if any minority member should be elected a deputy, he or she would not be regarded as part of the quota of 150. Thus the minority deputies occupy approximately one-seventh of all the deputies of the National People's Congress."⁷ Starting from 1982, minority deputies comprised approximately 12% of all National People's Congress deputies, while the Third National Census of 1982 showed that minorities comprised 6.62% of the national population. According to the Sixth National Census of 2010 minorities comprised 8.49% of the national population, while minority deputies comprised 12% of the 3000 deputies of the Twelfth National People's Congress; of these 360 minority deputies, 320 were elected in their province, autonomous region or municipality; 14 represented the People's Liberation Army; and 26 were included by the Standing Committee of the National People's Congress.⁸ Since the Sixth National

⁶ SHI & LIU, *supra* note 3, at 194-195.

⁷ Deng, *supra* note 2.

⁸ Dishier Jie Quanguo Renmin Daibiao Dahui Shaoshu Minzu Daibiao Minge Fenpei Fangan (第十二届全国人名代表大会少数民族代表名额分配方案) [Plan for Allocation of the Number of Deputies of the Minority Nationalities to the Twelfth National People's Congress] (promulgated by the Eleventh Standing Comm. Nat'l People's Cong., Apr. 27, 2012, effective Apr. 27, 2012) (China).

People's Congress, minority deputies in actual fact comprised approximately 14% of all deputies, well in excess of 12%.⁹

Aside from the non-application of proportional representation and rather the application of substantial representation to areas with small populations, the deputies for minorities were never based on their respective populations. The Sixth National Census shows that while the Hui minority and Weiwuer minority have similar populations – the former has a population of 10,586,087 while the latter has 10,069,346 – the Hui minority has 37 deputies while the Weiwuer minority has 22. This is due to the broader distribution of the Hui minority: aside from the 8 deputies from the Ningxia Hui Autonomous Region, 29 deputies were added to 14 other provinces, autonomous regions and municipalities; the Weiwuer minority has 22 deputies from the Xinjiang Weiwuer Autonomous Region. According to the 2010 National Census, 35 of 55 minorities have a population less than 670,000, and every one of these minorities has a deputy, even the Tataer and Luoba minorities which have a population of around 3000. The Gaoshan minority has a population of 4009, yet it has one deputy each for the provinces of Fujian and Taiwan; this shows the importance of representation in different geographical locales.

The deputies for Hong Kong, Macau and Taiwan are also not apportioned based on population, but the principle of substantive representation; this is the same for overseas Chinese who have returned to the People's Republic of China.¹⁰

The table below shows the number of deputies generated through proportionality based on population and substantial representation.

Table 4. The Proportion of Population Based Deputies from the Eighth, Ninth, Tenth and Twelfth National People's Congresses

Eighth People's Congress	National Congress	Ninth People's Congress	National Congress	Tenth People's Congress	National Congress	Twelfth National People's Congress
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⁹ LIU, *supra* note 5, at 265; SHI WEIMIN, LIU ZHI & GUO WEIQING, ZHONGGUO XUANJU JINZHAN BAOGAO (中国选举进展报告) [CHINA'S POLITICAL ELECTION DEVELOPMENT REPORT], 267-269 (2009).

¹⁰ According to the statistics from China's sixth national census, the population of Hong Kong in 2012 is 7,097,600. According to Decision of the Fifth Session of the Eleventh National People's Congress on the Number of Deputies to the Twelfth National People's Congress and on the Election of the Deputies, the number of deputies to the twelfth National People's Congress to be elected by the Hong Kong Special Administrative Region shall be 36. And the number of deputies to the twelfth National People's Congress to be elected by the Macao Special Administrative Region shall be 12, whose population is 552,300. And for Taiwan province, with a population of 23,162,123, 13 deputies shall be elected from among people of Taiwan origin in the other provinces, autonomous regions, and municipalities directly under the Central Government and in the Chinese People's Liberation Army.

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Deputies based on population	Deputies from urban areas	Deputies from rural areas	Deputies from urban areas	Deputies from rural areas	Deputies from urban areas	Deputies from rural areas	Deputies based on population
	1591	767	1286	1023	1343	954	2000
Total	2991		2981		2985		3000
number of deputies							
Percentage of deputies based on population	78.8		77.5		77.0		66.7

Data for the Eighth, Ninth and Tenth National People's Congress from 1 SHI WEIMIN & LIU ZHI, *JIANJIE XUANJU* (间接选举) [INDIRECT ELECTION], 194 (2004).

In Table 4 deputies based on population do not include 'other included deputies', as the author disagrees with Shi Weimin and Liu Zhi on this point; other included deputies are apportioned based on substantive representation and not proportionality based on population. Likewise the basic number of deputies for the Twelfth National People's Congress should not included as it reflects representation base on geographical locale and not population; this applies also to the deputies from Hong Kong, Macau and Taiwan. This shows that the introduction of the basic number of deputies increased the importance of substantial representation vis-à-vis formal proportionality.

C. Non-Regional Deputies

Aside from deputies apportioned according to population and other included deputies, a province, autonomous region or municipality would traditionally have a number of deputies assigned by the central government. Deputies are assigned by the central government, but their election takes place at the provincial, regional or municipal level, respectively. "The existence of a quota apportioned by the central government is to resolve voting issues in regard to three categories of persons, namely Party members and national leaders; potential members of the Standing Committee of the National People's Congress; members of democratic parties, leaders of people's groups, members of the central government and famous individuals." The proportion of these persons within the quota assigned by the central government in the Ninth and Tenth National People's Congresses was 12:40:48.¹¹ According to

¹¹ SHI & LIU, *supra* note 3, at 444.

Professor Cai Dingjian, who formerly participated in the work of the National People's Congress, "the apportionment of the central government quota is initiated by the Central Committee of the Chinese Communist Party, a list of potential deputies is drawn up in concert with the other democratic parties, non-affiliated persons and people's groups; the list is then sent by the General Office of the Standing Committee of the National People's Congress to all local People's Congresses. Nominees are generally recommended to places where they have worked, their place of origin or some other place."¹² The process described here by Professor Cai Dingjian probably refers to the third category of deputies assigned by the central government, namely members of democratic parties, leaders of people's groups, members of the central government and famous individuals. As compared to 'other included deputies', the central government has the right to nominate these deputies, whereas the local governments have the right to nominate the 'other included deputies'. The central government quota is often inadequate, for example the Ninth National People's Congress assigned 226 deputies whereas 240 were elected in; the Tenth National People's Congress assigned 240 whereas 253 were elected.¹³ Deputies assigned by the central government are assigned to the People's Liberation Army and the 31 provinces, autonomous regions and municipalities excluding Hong Kong, Macau and Taiwan.

Table 5. Deputies Assigned by the Central Government for the Eleventh National People's Congress

Voting Unit	Deputies Assigned by the Central Government
Beijing	12
Tianjin	9
Hebei	10
Shanxi	9
Neimenggu	5
Liaoning	7
Jilin	6
Heilongjiang	9
Shanghai	9
Jiangsu	12
Zhejiang	12
Anhui	10
Fujian	6
Jiangxi	7

¹² CAI DINGJIAN, *ZHONGGUO RENMIN DAIBIAO DAHUI ZHIDU* (中国人民代表大会制度) [THE SYSTEM OF CHINESE PEOPLE'S CONGRESS], 157-158 (1998).

¹³ SHI & LIU, *supra* note 3, at 201.

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Shandong	13
Henan	13
Hubei	10
Hunan	9
Guangdong	9
Guangxi	5
Hainan	4
Chongqing	6
Sichuan	11
Guizhou	6
Yunnan	5
Xizang	3
Shanxi	5
Gansu	5
Qinghai	4
Ningxia	4
Xinjiang	4
Taiwan	0
Hong Kong	0
Macau	0
People's Liberation Army	3

Data from SHI WEIMIN, LIU ZHI & GUO WEIQING, ZHONGGUO XUANJU JINZHAN BAOGAO (中国选举进展报告) [CHINA'S POLITICAL ELECTION DEVELOPMENT REPORT], 94-95 (2009).

The table above shows that the deputies assigned by the central government represented over 15% in the delegations of Beijing, Tianjin, Ningxia, Hainan, Qinghai, Shanghai and Xizang. Beijing, Tianjin and Shanghai are “areas with many deputies”, and Hainan, Ningxia, Xizang and Qinghai are areas with low population, so apportioning the deputies assigned by the central government here increases the size of their delegations.

Deputies from the People's Liberation Army delegation may also be viewed as deputies assigned by the central government; since the Sixth National People's Congress the delegation for the People's Liberation Army has been set at 260 deputies. Obviously these 260 deputies do not merely represent over 2,000,000 member of the People's Liberation Army. According to Professor Cai Dingjian, “the military is an important pillar of political power in China, therefore the military deputies have an important position in the National People's Congress. The number of military deputies depends on the political situation at the time; if we use the National People's Congress as an example, during the First and Second National People's Congresses, the legally required number of deputies from the People's Liberation Army was 60 or 5% of the deputies; during

the Cultural Revolution the number increased to 486 or 16.8% of the deputies; from the Sixth National People's Congress till now the number of deputies from the military has dropped to 267 or 9%. The stabilization of national politics should see a drop in the number of deputies from the military in the National People's Congress."¹⁴

The author agrees with Professor Cai Dingjian's observation that of the thirty odd delegations in the National People's Congress, only the People's Liberation Army delegation is non-regional. Political stability may lead to fewer deputies from the military, even returning to the 5% standard used formerly – or 150 deputies of 3000 deputies – yet that would cause the only non-regional delegation in the National People's Congress to be smaller than the delegations of Shandong, Henan or Guangzhou. Yet for a country with a strong unitary tradition, this might be inappropriate or even dangerous.

Deputies assigned by the central government and deputies of the People's Liberation Army may be regarded together as non-regional deputies. Since the Tenth National People's Congress, these two categories combined have exceeded 500 deputies and are equivalent to the sum of the nation's three largest provincial delegations (Shandong, Henan and Guangdong).

Table 6. The Proportion of the People's Liberation Army Delegation and the Deputies Assigned by the Central Government in the National People's Congress

	Fifth	Sixth	Seventh	Eighth	Ninth	Tenth	Eleventh	Twelfth
	National	National	National	National	National	National	National	National
	People's	People's	People's	People's	People's	People's	People's	People's
	Congress	Congress	Congress	Congress	Congress	Congress	Congress	Congress
People's	499	265	265	267	265	265	265	265
Liberation								
Army								
quota								
Deputies	229	222	222	223	231	240	255	255
Assigned								
by the								
Central								
Govt.								
As a	20.8	16.4	16.4	16.4	16.6	16.9	17.3	17.3
percentage								
of total								
number of								
deputies								
(%)								

¹⁴ CAI, *supra* note 12, at 156.

Data for the Fifth through the Tenth National People's Congresses from 1 SHI WEIMIN & LIU ZHI, *JIANJIE XUANJU* (间接选举) [INDIRECT ELECTION], 190 (2004); data for the Eleventh National People's Congress from the Plan for Allocation of the Number of Deputies to the Eleventh National People's Congress; data for the Twelfth National People's Congress from the Plan for Allocation of the Number of Deputies to the Twelfth National People's Congress.

The author does not necessarily oppose decreasing the number of military deputies, but owing to the fact that the National People's Congress does not have its own voting district and that the delegations are based on area, the reduced portion of the military quota should be turned over for the central government to decide; this would guarantee that non-regional deputies would not be fewer than 500 (greater than the sum of the three most numerous delegations). If this is not possible, reduction of the military quota should be placed on hold.

In conclusion, apportionment of the deputies of the National People's Congress is based on formal proportionality to population, and is supplemented by substantive representation in regard to areas, minorities and other other groups. Population returned upwards of 77% of the deputies, however the introduction of the 2010 Electoral Law and its concept of basic number of deputies dropped that figure to 67%; geography played a larger role and returned 248 deputies for 31 provinces, autonomous regions and municipalities under the central government and 61 deputies for Hong Kong, Macau and Taiwan, representing 10% of all deputies. In this context, the ability of the non-regional People's Liberation Army delegation and the central government to turn out 17% of the deputies is not unreasonable.

II. COMPOSITION OF THE NATIONAL PEOPLE'S CONGRESS'S DEPUTIES

Article 6 of the 2010 Electoral Law added a new clause: "The National People's Congress and Local Congresses' deputies should be broadly representative, and should include an appropriate number of grassroots representatives, especially workers, farmers and intellectuals."

This clause broadened the scope of substantial representation, as formerly it meant representation of areas with low populations or high percentages of minorities, and did not include the workers, farmers and intellectuals who comprise a majority of grassroots persons.

The Decision of the Fifth Session of the eleventh National People's Congress on the Number of Deputies to the twelfth National People's Congress and on the Election of the Deputies further stated

that “among the deputies of the Twelfth National People’s Congress, the percentage of grassroots representatives, especially workers on the frontlines, farmers and technical professionals, should increase [in comparison to the eleventh National People’s Congress], the percentage of the representatives of the farmers should increase slightly more, and the percentage of Party leaders should decrease [in comparison to the eleventh National People’s Congress].”

This regulation addresses two issues that have slowly developed in the last thirty years, namely the overrepresentation of government officials in the delegations as shown by the higher percentage of Party members and leaders, and the increasing elitism of the deputies as shown by the declining percentage of frontline workers, farmers and technical professionals.

A. Over-representation of the Government in the Delegations

The government is over-represented in the delegations; the number of deputies from government organs was in excess of 40% for both the Ninth and the Tenth National People’s Congresses, for which they comprised 41.32% and 43.43%, respectively.

Of the five levels of governmental organs, the provincial and municipal levels had the most deputies, comprising approximately 40% of all deputies from governmental organs. The county and township levels comprised 11.53% in the Ninth National People’s Congress and 13.19% in the Tenth National People’s Congress. According to media reports during the National People’s Congress, provincial leaders are the actual leaders of the delegation and play a leading role in the choosing of deputies.

Table 7. Government Officials in the Ninth and Tenth National People’s Congresses

Government Rank	Ninth National People’s Congress	Tenth National People’s Congress
Central government	129	131
Province	464	506
Municipality	496	488
County	88	138
Township	54	33

Data from 1 SHI WEIMIN & LIU ZHI, JIANJIE XUANJU (间接选举) [INDIRECT ELECTION], 399 (2004).

If government organs are further broken down into the Communist Party, the People’s Congress, the People’s Government and the Political Consultative Committee, it is clear that deputies come mainly from executive branches of the government and

accounted for over 60% of the deputies in the Ninth and Tenth National People's Congress, while the Communist Party, the People's Congress and the Political Consultative Committee only accounted for 40%.

Table 8. Government Officials from Different Systems in the Ninth and Tenth National People's Congresses

System	Ninth National People's Congress	Tenth National People's Congress
Communist Party	185	171
People's Congress	233	248
People's Government	740	787
Political Consultative Committee	73	90

Data from 1 SHI WEIMIN & LIU ZHI, JIANJIE XUANJU (间接选举) [INDIRECT ELECTION], 398 (2004).

If these systems are further broken down into those in leadership positions and those under leadership, it is clear that the largest component of deputies from governmental organs are deputies in leadership positions in the People's Government, comprising one-sixth of the total number of deputies. The second point to note is that the proportion of those in leadership positions is at its most extreme in the Political Consultative Committee, reaching 21.5 times those under leadership. The proportion of deputies in leadership roles in the People's Congress and Communist Party hovers between 3 to 5 times those under leadership. The People's Government has the lowest proportion with 1.47 times for the Ninth National People's Congress and 1.75 times for the Tenth National People's Congress. This proportion means that deputies from the Communist Party, People's Congress and Political Consultative Committee are mainly leaders, while within the People's Government there are still a large number of deputies who have non-leadership positions.

Table 9. Deputies from the Ninth and Tenth National People's Congresses from Governmental Organs in Leadership Roles and Under Leadership

	Communist Party		People's Government		People's Congress		Political Consultative Committee	
	Ninth	Tenth	Ninth	Tenth	Ninth	Tenth	Ninth	Tenth
Leadership roles	151	131	440	501	190	209	69	86
Under leadership	34	40	300	286	43	39	4	4

Data from 1 SHI WEIMIN & LIU ZHI, JIANJIE XUANJU (间接选举) [INDIRECT ELECTION], 388-396 (2004).

In conclusion, the over-representation of the government in the deputies of the National People's Congress is evident in a number of aspects: firstly, approximately 40% of all the delegations are from governmental organs; secondly, of these deputies, 40% are from the provincial and municipal levels, while fewer deputies are from the county and township levels, which is as much to say that those in leadership positions outnumber those in lower positions (the proportion of the Ninth National People's Congress was 69:31, while the Tenth National People's Congress was 72:28); thirdly, deputies from the People's Government occupy approximately 60%, greatly outnumbering deputies from the People's Congress, the Communist Party and the Political Consultative Committee. However a large number of deputies in non-leadership positions come from the People's Government.

B. Increasing Elitism of the Deputies Status and Professions

The increasing elitism of the deputies is obvious when viewed in a historical context. From the thirty years since the 1978 Fifth National People's Congress, the most obvious trend in the composition of the deputies has been a drop in the percentage of deputies qualifying as workers and farmers, the increase in deputies from governmental organs, a decrease following an increase in the number of deputies qualifying as intellectuals, and the relative stability of the number of military deputies. The increasing elitism of the deputies dovetails with the overrepresentation of the government among the deputies.

Table 10. Status of the Deputies of the Fifth – Eleventh National People's Congresses (%)

	Workers and farmers	Government officials	Intellectuals	People's Liberation Army	Other
Fifth NPC	47.33	13.38	14.96	14.38	9.95
Sixth NPC	26.57	21.35	23.54	8.97	19.57
Seventh NPC	23.03	24.68	23.47	8.99	19.83
Eighth NPC	20.55	28.27	21.79	8.97	20.42
Ninth NPC	15.04	54.78	21.18	9	0
Tenth NPC	18.17	54.99	17.86	8.98	0
Eleventh NPC	20.59	52.93	17.51	8.97	0

Data from SHI WEIMIN, LIU ZHI & GUO WEIQING, ZHONGGUO XUANJU JINZHAN BAOGAO (中国选举进展报告) [CHINA'S POLITICAL ELECTION DEVELOPMENT REPORT], 421-422 (2009).

However the status of a deputy refers not so much to his actual profession, but rather his background. For instance a farmer-entrepreneur was formerly a farmer, but his actual profession would now be business.

Professor Cai Dingjian provided a table in his book compiled based on the deputies' actual professions. Worker is defined as an individual working at an enterprise and includes an individual in charge of his or her workshop; a farmer is defined as an individual whose place of residence and place of work is the township committee, and does not include farmer-entrepreneurs. The table below shows that in the Ninth and Tenth National People's Congresses, the percentage of frontline workers and farmers was actually 2.89% and 5.44%, respectively; while government officials comprised 41.35% and 33.17%, respectively.

The second largest profession in the composition of the deputies of the National People's Congress is that of the entrepreneur; in the Ninth and Tenth National People's Congresses, entrepreneurs comprised 20.54% and 33.17%, respectively.

The third largest group are professionals, including professors, researchers, doctors, the legal world, the literature and art world, financial experts and athletes; in the Ninth and Tenth National People's Congresses, they comprised 19.64% and 18.36 % of the deputies, respectively.

Table 11. The Composition of the Deputies of the Ninth and Tenth National People's Congress based on Profession

Profession	Ninth National People's Congress	Tenth National People's Congress
Government officials	1240	988
Entrepreneurs	613	412
Professors and researchers	348	338
Doctors	88	96
Legal professionals	69	45
Writers and artists	48	36
Financial sector workers	20	18
Athletes	13	14
Elementary and middle school	51	58

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teachers		
Grassroots	37	43
government officials		
Farmers	56	66
Workers	30	96
Military	268	268
Police and Military	48	29
Police		
Others	55	472

Data from CAI DINGJIAN, *ZHONGGUO RENMIN DAIBIAO DAHUI ZHIDU* (中国人民代表大会制度) [THE SYSTEM OF CHINESE PEOPLE'S CONGRESS], 221 (1998).

If we group government officials, entrepreneurs and professionals together as elite deputies, group workers, farmers and elementary and middle school teachers together as grassroots deputies, and group the military, police and military police together, then the Ninth National People's Congress had 2439 elite deputies comprising 81% of all deputies and setting the record for the most elite deputies ever; by contrast, grassroots deputies accounted for 174 deputies, comprising only 6%. The situation improved as the Tenth National People's Congress was comprised of 65% elite deputies and 9% grassroots deputies.

However the drop in the number of elite deputies in the Tenth National People's Congress may not be as precipitous as it seems. While the number of government officials and entrepreneurs dropped, those deputies listed as having a profession not listed rose from 1.84% to 15.84%; the composition of this category is unclear.

III. IMPROVING THE COMPOSITION OF THE NATIONAL PEOPLE'S CONGRESS

Over-representation of the government in the delegations and the increasing elitism of the deputies has come under attack in the more recent years. To cope with this issue The Decision of the Fifth Session of the Tenth National People's Congress on the Number of Deputies to the Eleventh National People's Congress and on the Election of the Deputies stated that "among the deputies of the Eleventh National People's Congress, more frontline workers and farmers should be included as compared to the Tenth National People's Congress. Provinces and autonomous regions with high concentrations of farmers should have deputies whose professions are farming." The 2010 Electoral Law officially utilized the principle of substantive representation and attempted to increase the number of deputies who are at the same time grassroots workers, farmers and

intellectuals. If everything goes as expected, the voting in of deputies for the Twelfth National People's Congress in 2013 should see an increase in the number of grassroots workers, farmers and technical professionals, while seeing a decrease in the number of deputies from the Communist Party and the People's Governments.

Based on the presupposition that the electoral system of the National People's Congress will be changed in small increments, the author generally agrees with the quota system as a matter of expediency.¹⁵ However aside from categories such as gender, race and overseas Chinese which tend not to change over time, categories such as status and profession will create confusion for the quota system. For instance, should the vice president in charge of a company's agricultural affairs be listed as a farmer deputy? Should farmer-entrepreneurs be listed as farmer deputies? Should workers and farmers who have attained managerial posts be still listed as workers and farmers?

The term grassroots deputies is fraught with even greater controversy. During discussion over the amending of the Electoral Law, committee member Liu Zhenwei stated that "article 6 states that the National People's Congress and local People's Congresses should have appropriate numbers of grassroots deputies, and this is a good idea. However there is no agreement on the term grassroots, for instance when the central government hires government officials, work experience below the municipal level is regarded as grassroots working experience; when the provincial government hires government officials work experience below the county level is regarded as grassroots working experience; therefore it would appear that the term "grassroots" is relative. My understanding is that the grassroots deputies referred to by the Electoral Law are the frontline workers, farmers and intellectuals engaged in increasing production, technological work, cultural work and sanitary work. If the term "grassroots" is not defined clearly, other individuals will utilize the quota set aside for grassroots deputies."¹⁶ It would appear that the Decision of the Fifth Session of the Eleventh National People's Congress on the Number of Deputies to the Twelfth National People's Congress and on the Election of the Deputies accepted this proposition by requiring "grassroots workers, especially frontline

¹⁵ Zhao Xiaoli, *Gaijin Renda Daibiao Minge Fenpei Zhidu* (改进人大代表名额分配制度) [Advices on the Improvement of Allocation of the Number of Deputies of People's Congress System], ZHONGGUO GAIGE (中国改革) [CHINA REFORM], Mar., 2008, at 69.

¹⁶ *Guanyu Renda Daibiao De Guangfanxing: Xuanju Fa Xiuzheng Caoan Shenyi Zhaideng (San)* (关于人大代表的广泛性: 选举法修正草案审议摘登 (三)) [On the Universality of the Deputies of the People's Congress: Extracts From the Discussion About the Draft Amendment of Measures of the Election of the Deputies], NAT'L PEOPLE'S CONG., http://www.npc.gov.cn/huiyi/lfzt/xjfxzaca/2009-11/12/content_1526486.htm (last visited Aug. 1, 2012).

workers, farmers and technical professionals, should comprise a higher percentage of the deputies as compared to the previous National People's Congress." This however creates a new problem, namely how "frontline" should be defined. Are office workers "frontline" workers?

The author holds that the best way of fundamentally improving the National People's Congress is by moving to the direct election of the deputies, so that the rule that "every 670,000 people shall have one deputy" changes to "every 670,000 people shall elect one deputy".

Deng Xiaoping stated in the explanation of the Draft of the 1953 Electoral Law that "universal and equal suffrage paired with a secret ballot in a direct election is the world's best electoral system."¹⁷ While western nations implemented direct election prior to universal suffrage, our nation chose to implement universal suffrage prior to direct election. In 1953 deputies of the township level People's Congresses were elected via direct election, and by 1979 deputies of the People's Congress at the county and township levels were elected via direct election. During the 2004 amending of the Electoral Law, the author researched a number of suggestions regarding expansion of direct elections,¹⁸ and proposed that direct elections be used for the election of deputies of the People's Congresses, and not unconstitutionally in the election of township mayors and county mayors; the author proposed that direct election reform should start from the National People's Congress and move towards the local People's Congresses, thereby moving to direct elections from indirect election first at the provincial level, then to the provincial municipal level and finally the the voting district level, until direct elections are in place at the voting district level; the author further stated that in order to avoid the fractionalization that often accompanies democratization, "the direct election of the National People's Congress deputies should be prior to, or at the very least not following, the direct election of deputies for People's Congresses at the provincial, municipal and autonomous region levels."¹⁹

The author still holds these views. With the abolishing of the one-quarter clause, the final obstacle to equal suffrage has been removed, and direct elections should now be discussed by the National People's Congress.

The author would like to stress that over-representation of the government in the delegations and the increasing elitism of the

¹⁷ Deng, *supra* note 2.

¹⁸ Zhao Xiaoli, *Cong Puxuan Dao Zhixuan: Kuoda Zhixuan De Ruogan Tiyi (从普选到直选: 扩大直选的若干提议)* [From Direct Election to Indirect Election: Several Proposals on Promoting Direct Election], SHUCHENG (书城) [BOOK CITY], Oct., 2004, at 35.

¹⁹ *Id.*

deputies are issues that cannot be solved through the quota system. The quota system is effective in guaranteeing the representation of less populous regions, minorities and other groups, but is not the most effective way of safeguarding the needs of the citizens for representatives. Even if the percentage of workers and farmers returns to the 40% seen in the Fifth National People's Congress, the current indirect electoral system will not allow a general approval to form among the workers and farmers who comprise the majority of the population. Most grassroots workers, farmers, farmer-workers and technical professionals do not require a representative who is like himself, but rather requires a representative who can answer for his will, his interests and his needs.

The fundamental issue with the National People's Congress is not that there is insufficient substantial representation of the nation, but rather that there is no direct link between the deputies and their constituents. Over-representation of the government is not an issue in and of itself, as all government officials are elected by the legislative body in systems of representative democracy, and therefore the legislative body must necessarily over-represent the government.²⁰ Likewise, the increasing elitism of the deputies is not in and of itself an issue, as the legislative body necessarily attracts individuals from an elite background.²¹ The main issue is that regardless of government officials or elite deputies, the multi-layer indirect electoral system does not respond to the will, interests or needs of the people.

During the amending of the 2010 Electoral Law, the author discussed the possibility of creating 3000 national electoral districts and providing for direct elections; here he proposes that the 2000 deputies of the National People's Congress apportioned based on population and currently elected by the provincial People's Congress be elected by the municipal People's Congress and then later by the county People's Congress, and finally by direct election at the township level; the remaining 1000 deputies apportioned based on substantial representation may continue to be elected via indirect election, as this guarantees the realization of substantial representation.

The author believes that direct election will lead to an even higher percentage of government officials and elite deputies among the deputies of the National People's Congress. For instance, if a member of the ruling party and also a member of the central

²⁰ See WALTER BAGEHOT, *YINGGUO XIANZHİ (英国宪制) [THE ENGLISH CONSTITUTION]* ch. 1, (Li Guoqing trans., Peking U. Press, Aug. 1, 2005).

²¹ MAX WEBER, *Parliament and Government of Rearranged Germany. The Political Party System and Criticism of Officialdom*, in *SELECTED POLITICAL WORKS OF MAX WEBER 107-217* (Yan Kewen trans., 2009).

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committee runs against a farmer-worker (let us ignore for now how he was nominated), then normally speaking the former would be elected, as generally the former not only has the resources of the ruling party, but also the confidence of his constituents that he can respond to their will, their interests and their needs; is constituents have no need for a deputy who is merely like them. In other words, the fundamental method to improve the National People's Congress is the slow reduction of the multi-layer indirect election of deputies so as to strengthen the deputies bonds with the people they represent.