



17 January, 2006

The Hon. Donald TSANG Yam-kuen
Chief Executive
5/F, Main Wing, Central Government Offices,
Lower Albert Road, Central.

Dear Mr. Tsang,

Re: Civic Exchange's latest publication – *Election Reform in China*

Civic Exchange yesterday released a report entitled: "Election Reform in China: Its Context, Recent Developments, and Future" written by LIN Feng. This report looks at current status of electoral system reform in China by examining the three elements of China's electoral system and predicts the direction of future development. The three elements of China's electoral system include:

- a) the electoral system of grassroots autonomous organisations;
- b) the electoral system of the people's congresses at all levels; and
- c) the electoral system of officials of governmental organs at all levels.

This is Civic Exchange's first project to look at national policy issues that are of interest to both national and international communities. We hope the report can be informative to Hong Kong people, who are going through their own trials and tribulations over electoral reforms. The more the people in Hong Kong know about the national experience, the better they may be capable of thinking through challenges in finding their own course in constitutional development.

A copy of the report is enclosed for you. We hope you find it useful.

Yours sincerely,

(Signed)

Yanyan YIP
Researcher and Project Manager
Encl.

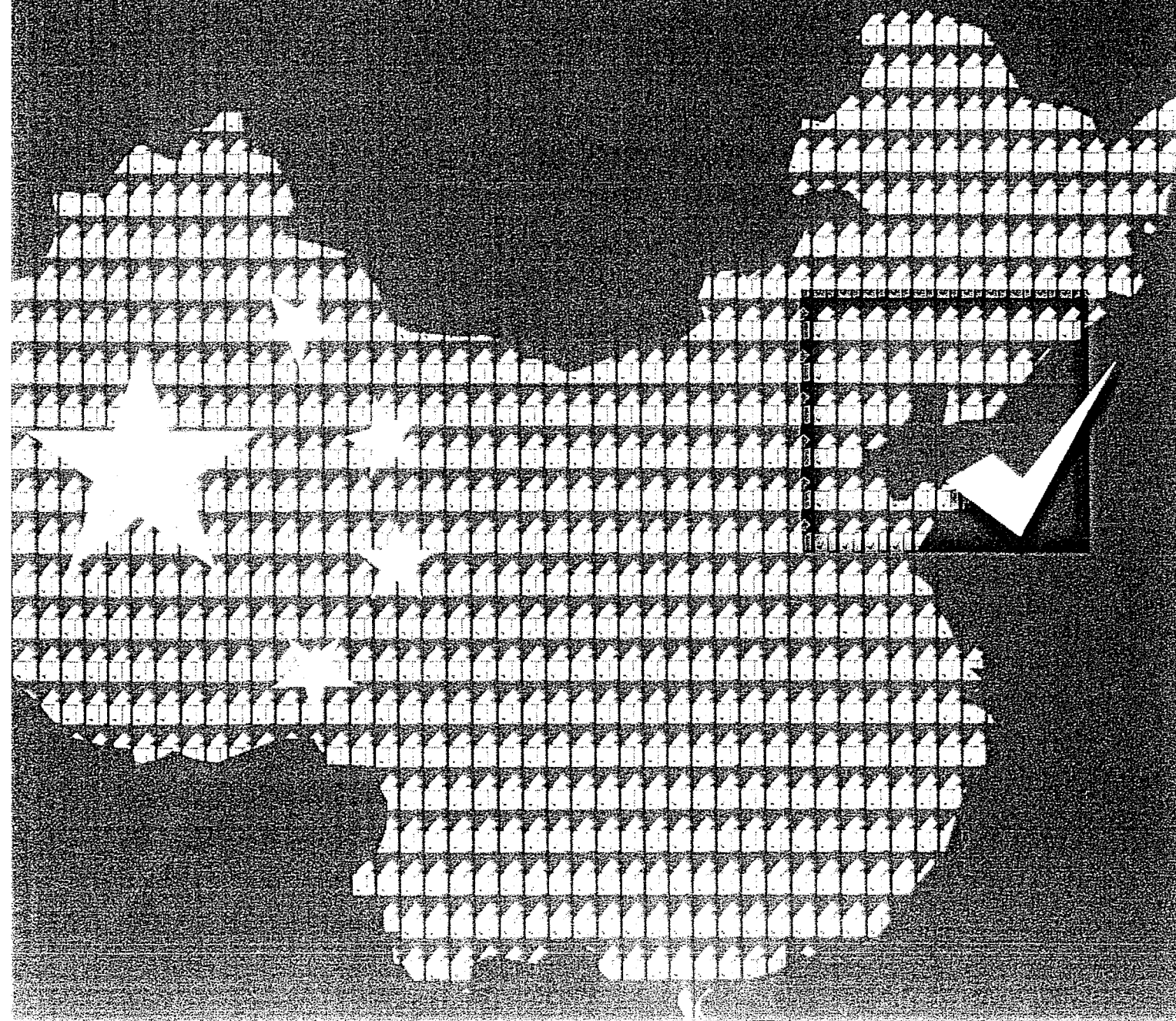
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中國選舉制度改革背景、現狀、及其未來

林峰



二零零六年一月



中国选举制度改革的背景、现状、及其未来

林峰*

二零零六年一月



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* 香港城市大学法律学院副教授，一九八七年于上海复旦大学获得法学学士学位；一九九二年于新西兰获得法学硕士学位；一九九八年于北京大学获得法学博士学位。香港执业大律师。该研究报告是由思汇政策研究所提供的研究经费资助的中国选举制度改革研究课题的研究成果。本文作者将对该研究报告所提出的观点以及报告中可能出现的错误承担全部的责任。

思汇政策研究所是一非牟利组织，主要透过研究和分析以协助改善政策和决策。本报告之内容乃属作者之意见，并不代表思汇政策研究所的立场。

鸣谢

此研究报告是由思汇政策研究所 2005 所资助的关于中国选举制度研究项目的研究成果。作者特别要感谢广东省科学政策研究所的田广军先生及其同事，他们不仅帮助安排了广东省委有关人士给作者介绍广东省 2005 年村民委员会选举的情况，而且还安排作者到广东省进行实地考察和调研。在研究过程中，作者数次和浙江大学法学院林莱梵教授就本课题所涉及的一些问题交换意见，获益非浅。浙江大学法学院郑磊博士生为本课题的研究收集了许多有用的资料。在此，作者向他们表示感谢。作者还要感谢思汇政策研究所的陆恭蕙和叶澱澱。她们也给作者提供了有关该研究课题的一些有用的资料和信息。作者也要感谢英文版编辑 Bill Leverett 所做的杰出编辑工作以及所提出的有用建议。当然，作者将对本研究报告中的观点和所有可能存在的错误负责。

序

思汇政策研究所很高兴能够与林峰合作，撰文探讨中国的选举制度。这是思汇政策研究所首次研究国家层面的政策，而我们相信不但中国十分重视其选举制度的发展，其它国家也对这课题甚感兴趣。

现时不少人认为中国需要继续改革其选举制度，以提升管治质素及提高民众民主参与的程度。选举已于中国出现了一段时间，相信可以为学者提供一些研究资料，有助他们找出中国选举的发展趋势和向有关当局提出建议。思汇政策研究所希望可以继续研究和探讨中国的政策，并与内地交流。

香港正值讨论其选举制度的发展路向，思汇政策研究所期望本报告能对港人起参考作用。愈多港人了解内地选举的经验就愈可能协助香港找出自己政制发展的前路。

本研究项目为思汇政策研究所二零零五年民主发展计划的一部分，由美国 National Endowment for Democracy 资助。思汇政策研究所感谢林峰撰文、叶澌澌管理整个民主发展计划及整理报告的中文版、Bill Leverett 编辑英文版报告，以及 Ken Li 设计报告封面。

思汇政策研究所行政总监
陆恭蕙

二零零六年一月

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1. 前言

二零零四年中国共产党第十六届四中全会通过了《中共中央关于加强党的执政能力建设的决定》(以下简称「《决定》」)。¹《决定》指出,加强党的执政能力建设是关系到中华民族的前途命运、共产党的生死存亡、以及国家的长治久安的重大战略课题。¹《决定》总结了执政五十五年来的六条主要经验,其中之一是「必须坚持科学执政、民主执政、依法执政,不断完善党的领导方式和执政方式」。²这不仅被认为是经验之一,而且也被认定为是加强党的执政能力建设的重要指导原则和总体目标之一。同时,《决定》还把发展社会主义民主政治的能力作为加强党的执政能力建设的五项主要任务之一,并提出民主政治的根本要求就是要把坚持党的领导、人民当家作主和依法治国统一在一起。³其中,加强制度建设、实现社会主义民主政治的制度化、规范化和程序化被认为是发展社会主义民主政治的关键;⁴依法治国被视为是民主政治的基本方略;而改革和完善党的领导则被认为是人民当家作主和依法治国的根本保证。⁵二零零五年十月十九日中国政府首次发表了题为《中国的民主政治建设》的白皮书。这些充分说明中国共产党已经高度重视民主政治制度建设并把民主政治制度的建设看作是关系到共产党生死存亡的大事。另一方面,早在十六届四中全会召开之前,胡鞍钢等三位学者就已经认为中国从以经济建设为中心向以制度建设为中心过渡的时机已经成熟,并提出中国应该从始于党的十一届三中全会的以经济建设为中心的时代走向以国家制度建设为中心的时代。他们把中国自一九七八年从旧体制走向以经济建设为中心视为第一次转型,并提出中国已经具备条件并应该进行第二次转型,即从以经济建设为中心转向以国家制度建设为中心。⁶周天勇则认为中国的政治体制已经到了非改不可的地步,问题只是改什么、怎么改、以及改到什么程度?⁷由此可见,中国共产党和一些学者们都已经认识到中国不仅有必要,而且是时候对现行的政治制度加以改革,实现民主政治制度。

在这一宏观政治背景之下,本文选择民主政治制度的重要内容之一:选举制度,作为研究的对象。中国的选举制度由三大部分构成,第一是基层自治组织选举制度;第二是各级人大的选举制度;第三是各级政府机构领导人的选举制度。许多中外学者已经对农村村民委员会选举制度和乡镇长选举制度进行了广泛和深入的研究。有学者认为中国农村选举制度的改革代表了中国政治体制改革的路径⁸,而乡镇长选举制度的改革试点会成为中国政治制度改革的突破口。但是另外一种意见认为有些乡镇长选举制度改革的试点是违宪的,因此在中国是不可能加以推广

¹ 参见:《中共中央关于加强党的执政能力建设的决定》;又见:曾庆红,「加强党的执政能力建设的纲领性文献」,人民日报,2004年10月8日。转引自虞云耀、李君如(主编),《加强党的执政能力建设专题讲稿》,中共中央党校出版社,2004年10月第1版,北京。曾庆红现任中共中央政治局常委、中央书记处书记、中央党校校长,中华人民共和国副主席。

² 同上。

³ 参见:《中共中央关于加强党的执政能力建设的决定》;又见:曾庆红,注1,第12页。

⁴ 参见:《中共中央关于加强党的执政能力建设的决定》;又见:曾庆红,注1,第11页。

⁵ 参见:《中共中央关于加强党的执政能力建设的决定》;又见:曾庆红,注1,第12页。

⁶ 参见:胡鞍钢等(主编),《第二次转型:国家制度建设》,清华大学出版社,北京,2003年7月第1版。

⁷ 参见:周天勇,《全面建设小康社会研究报告集:中国政治体制改革》,中国水利水电出版社,北京,2004年9月第1版,第1页。

⁸ 参见:李凡,《中国选举制度改革》,上海交通大学出版社,2005年1月第1版,第3页。

的。⁹那么中国选举制度的未来究竟会如何呢？本文希望通过对上述三种选举制度的探讨和分析，能够对中国选举制度的现状有一个正确的认识，并预测中国选举制度今后的发展方向。文章将采用相同的研究方法对上述三种选举制度进行研究，分别对每种选举制度从法律规范、共产党的政策考虑、以及最新的选举实践这三个方面加以分析。文章的第二部分将首先讨论基层自治组织中村民委员会的选举制度。由于农村基层自治组织（村民委员会）的选举已经有二十多年的历史，研究村民委员会的专著和论文已有很多，因此作者将着重讨论村民委员会选举的最新发展，并在其他学者研究的基础之上对村民委员会选举制度的现状和未来提出自己的看法。文章的第三部分将讨论人大选举制度。根据《中华人民共和国全国人民代表大会和地方各级人民代表大会选举法》（以下简称「《选举法》」）的规定，乡镇和区县这两级人大代表是由选民直接选举产生的，而县级以上（不包括县级）人大代表是由下一级人大代表选举所产生的。作者的观点是首先要研究清楚乡镇和区县这两级人大选举是否成功，若这两级人大的直接选举是成功的，那么就应当而且可以把直接选举制度逐步往上扩大，直到全国人大；若这两级人大的直接选举是不成功的话，那么扩大直接选举就没有任何意义。真正应该做的工作是找出这两级人大选举的不足之处并加以改进，然后才考虑扩大直接选举的范围。因此第三部分中对选举实践的分析将侧重于乡镇和区县这两级人大选举制度。文章第四部分对中国各级政府机构领导人的选举制度加以研究。由于中国的乡镇以及区县级领导人的选举已经开始出现了不同的改革尝试，其中对乡镇长选举的改革试点已有七年的历史了，因此这部分中对选举实践的分析将侧重于已经出现的基层政府领导人选举改革的几种模式。

作者认为现行的三种选举制度中，基层自治组织的选举制度和另外两种选举制度存在着本质上的区别，前者是自治组织的选举，而后两种选举制度涉及国家政权机构的成员和领导人的选举，因此也就有可能会影响到共产党的执政地位。就村民委员会选举制度而言，由于法律规范和共产党的政策都明确支持村民委员会的直选，因此作者认为虽然在中国农村真正实行民主直选村民委员会还有相当长的一段路要走，但是其前途是光明的。有许多研究村民委员会选举的学者认为村民委员会的直接选举会推动中国的民主进程，包括乡镇长的直选。¹⁰但是作者认为村民委员会的直选对另外两种选举制度的改革并不具有直接的可借鉴性。这是因为，从法律角度来看，村民委员会作为基层自治组织，并不属于一级政府，而人大和各级政府组织都是属于中国宪政架构的组成部分，因此它们的性质是不同的。而且，规范村民委员会选举制度的法律规定和规范人大选举和政府机构领导人选举的法律规定有本质的不同。更重要的原因是共产党对人大选举制度和政府机构领导人选举制度改革的决心明显不如对村民委员会选举制度改革来得坚定。就人大选举制度而言，有人认为中国已经完全有条件进一步扩大直选的范围，即从县一级扩大到市和省一级。¹¹但是基层人大选举制度还存在许多问题，虽然有些地方人大的选举中已经出现了竞争性选举，但是就全国范围而言，基层人大选举还是属于传统的确认性选举，因而并非真正的民主选举。因此，作者认为中国目前人大选举还不具备进一步扩大直选的条件，而且扩大直选也没有任何意义。就基层政府机构领导人选举制度而言，中国各地已经开始的一些乡镇长和县市长直选改革虽然有其可行性，但是由于这一改革直接和人民代表大会制度相冲突，因此作者认为更可行的方案是由基层人大直接组建同级政府而不必再通过人大选举产

⁹ 参见：查庆九，「民主不能超越法律」，《法制日报》，1999年1月19日。

¹⁰ 例如：李凡，《乘风而来——我所经历的步云乡乡长直选》，西北大学出版社，2003年4月第1版，第198—222页。

¹¹ 参见：焦洪昌、王亦白，「公民对选举改革期待的调查与分析」，载于蔡定剑（主编），《中国选举状况的报告》，法律出版社，2002年，北京，第270—280页。

生同级政府。这样做既符合人民代表大会制度也可以使人民代表大会制，即议会制，在中国基层真正运作起来。

在对中国现行的三种选举制度进行分析和研究之后，我们不难发现中国共产党各级党组织的决定直接或者间接地影响上述三种选举制度的运作。换句话说，党内的决定直接或者间接地影响上述三种选举的结果。因此，本文的五部分将简要地讨论中国共产党党内的选举制度改革。文章的最后一部分对中国共产党与选举的关系、现行三种选举制度之间的关系、以及三种选举制度的未来作进一步分析。作者认为中国农村村民委员会选举制度由于有共产党的推动和法律规范的支持，正在朝着健康的方向发展。基层人大和政府机构领导人选举制度的改革由于缺少共产党政策上的支持和受到党管干部原则的制约，其发展方向并不明确，其前景主要取决于共产党改革的决心。由于共产党的十六届四中全会已经把制度建设提上了议事日程，虽然还没有具体的改革措施的出台，但是对现行制度进行改革的方向已经明确了，因此作者对中国选举制度的未来持审慎乐观的态度。

2. 村民委员会选举制度

一九八二年《中华人民共和国宪法》（「八二《宪法》」）将城市的居民委员会和农村的村民委员会这两种基层组织定性为群众性自治组织。¹²由于村民委员会和居民委员会在法律上是属于同性质的组织，而且村民委员会选举的历史更长，因此，本文只对基层组织选举制度中的村民委员会的选举加以讨论。

2.1 村民委员会选举法律规范研究

虽然八二《宪法》规定了村民委员会由村民选举产生，但是并没有明确规定是直接选举还是间接选举。因此事实上，从八二《宪法》颁布实施到《中华人民共和国村民委员会组织法》（试行）（「八七《村委会组织法》」）于一九八七年颁布之前这段时间内，中国并没有具体的法律规范来调整村民委员会的选举。八七《村委会组织法》的出台使得村民委员会的选举第一次有法可依。一些地方也制定了相应的地方性法规。¹³从法律规范的角度来看，八七《村委会组织法》已经就村委会的性质、法律地位、职责等作出了规定，也对村委会和乡镇府的关系作了定性，规定两者之间的关系是指导与协调关系，而非领导与被领导关系。¹⁴

一九九八年全国人大常委会针对八七《村委会组织法》在实际运作中存在的问题对其作出了重大修改，通过了《中华人民共和国村民委员会组织法》（以下简称「九八《村委会组织法》」）。修改的重点包括：（1）对「海选」制度¹⁵予以法律确认，明确规定「村民委员会主任、副主任和委员，由村民直接选举产生。任何组织或者个人不得指定、委派或者撤换村民委员会成员」¹⁶；（2）增加了对村党支部在村级组织中的地位的规定，要求「中国共产党在农村

¹² 参见：八二《宪法》第 111 条第 1 款。

¹³ 例如：一九九零年八月二十四日黑龙江省第七届人大常委会第十六次会议通过了《黑龙江省实施〈中华人民共和国村民委员会组织法（试行）〉办法》。

¹⁴ 参见：八七《中华人民共和国村民委员会组织法》。

¹⁵ 一九九三年，吉林省梨树县就创造了上级领导不定调子，亦不划框子，把候选人提名的权利完全交给村民，由选民按照自己的意愿推荐候选人的「海选」方法。该县三百三十六个村委会全部实行「海选」。

¹⁶ 参见：九八《中华人民共和国村民委员会组织法》第 11 条第 1 款。

的基层组织，按照中国共产党章程进行工作，发挥领导核心作用；依照宪法和法律，支持和保障村民开展自治活动、直接行使民主权利；(3) 进一步明确了村委会与乡镇政府的关系，规定乡镇人民政府「不得干预依法属于村民自治范围内的事项」；(4) 针对一些地方指定候选人或者指令不许选某人以及搞等额选举的情况，明确了差额选举原则，规定「选举村民委员会，由本村村民提名候选人，候选人的名额应当多于应选人的名额」；¹⁷ (5) 针对选举中不民主的现象，对选举程序作出了一系列的修改以确保选举的民主性，例如规定在村民委员会选举前，应当公布有选举权和被选举权的村民的名单；规定村民委员会的选举必须由村民选举委员会主持；规定村民选举委员会成员将由村民会议或者各村民小组推选产生；¹⁸ 规定了村民直接提名的权利；规定了选举违法处理程序；以及规定了罢免程序等等；(6) 对民主决策和民主监督制度有了更详细的规定，例如增加了应该由村民会议讨论的涉及村民利益的具体事项，明确规定村民委员会实行村务公开制度等等。

除了全国性法律之外，全国三十一个省、直辖市和自治区都已经制定了地方性法规来具体落实和实施九八《村委会组织法》，规范本辖区内的村民委员会的选举，绝大多数省、直辖市和自治区也都制定了有关的村民委员会选举办法。¹⁹

从法律规范的角度来看，九八《村委会组织法》的出台和全国各省、市、自治区为了配合该法所颁布的一系列地方性法规，进一步完善了村民委员会选举制度，给村民通过民主、竞争的方式参加和选举村民委员会主任和委员提供了制度保障。通过法律规范的制定、在制度上消除了基层党组织和乡镇人民政府干涉村民委员会选举工作的可行性；通过新增加的一系列程序性规定，在制度上减少了不民主现象发生的可能性。因此，在法律规范的层面，九八《村委会组织法》带给人们的信息是非常明确的，即希望从制度上确保村民能够直接行使民主权利，真正实行村民自治，而不受基层党组织和乡镇人民政府的干涉。

2.2 政策分析

从中国共产党的政策层面来看，自一九七八年改革开放以来，共产党及中央政府就开始推行和发展农村基层民主，并把农村村民自治作为一项重要的制度。一九八一年六月，共产党在总结历史经验和教训的基础上，在《关于建国以来党的若干历史问题的决议》中明确提出要「在基层政权和基层社会生活中逐步实现人民的直接民主」。²⁰ 在八七《村委会组织法》出台之后，中央几个不同的部委联合在一九九零至一九九四年期间召开了一系列的会议，讨论和总结完善与发展村民自治的经验，并把村民自治活动概括为「四个民主」，即民主选举、民主决策、民主管理和民主监督。这「四个民主」于一九九七年十月党的十五大上首次被写进了党的代表大会报告。²¹ 一九九八年十月召开的党的十五届三中全会，对村民自治给予了高度评价，并明确指出「扩大农村基层民主，实行村民自治，是党领导亿万农民建设有中国特色社会主义民主政治的伟大创造」。²² 二零零二年七月十四日，中共中央办公厅和国务院办公厅联合下发了《关于进

¹⁷ 参见：九八《中华人民共和国村民委员会组织法》第14条。

¹⁸ 参见：九八《中华人民共和国村民委员会组织法》第13条。

¹⁹ 参见：中国农村村民自治网，<http://www.chinavillage.org/dffg.htm>。

²⁰ 参见：民政部网页：「农村基层民主政治建设发展的主要进程」，下载于http://www.mca.gov.cn/artical/content/WCM_YWJS/20031224145024.htm。

²¹ 参见：参见中共十五大工作报告《高举邓小平理论伟大旗帜，把建设有中国特色社会主义事业全面推向二十一世纪》第六部分。

²² 参见：注20。

一步做好村民委员会换届选举工作的通知》(中办发[2002]14号)。这是推行村民自治以来党中央下发的第一份规范性文件。²³它的颁布不仅表明中国共产党对村民委员会民主选举制度的重视、认同和支持,而且证明共产党要求其地方组织加强对村民委员会选举工作的领导和配合。因此,村民委员会选举制度的发展在政策上一直是得到中国共产党的支持的,并且是在共产党的领导下逐步发展起来的。中共十六大四中全会所通过的《决定》也明确指出要扩大基层民主,完善基层政权、基层群众性自治组织,保证基层群众依法行使民主权利。²⁴中国政府发表的题为《中国的民主政治建设》的白皮书第六章专门讨论了中国的基层民主。该章指出,农村基层民主是中国民主政治建设的重大问题,并且肯定了村民自治是「一条适合中国国情的推进农村基层民主政治建设的途径」。²⁵

为什么共产党扩大农村基层民主选举的决心是如此坚定呢?作者认为主要有以下几个原因。一是在性质上农村村民委员会是属于自治组织,它的选举并不涉及国家权力,因而也就不会影响到共产党的执政地位。二是中国有九亿农民,农村问题处理的好与坏直接影响到社会的稳定。共产党认为民主选举、民主决策、民主管理和民主监督有可能是解决长期存在的农村问题的有效措施。三是村民委员会并不掌握任何政府资源。

2.3 选举实践分析

从以上分析可以看出,村民委员会选举制度不仅在政策上得到了中国共产党的充分支持,而且在法律规范方面有足够的保障。那么村民委员会选举在实践中运作得如何呢?由于有许多专著和论文已经对二零零五年之前的农村村民委员会的选举实践进行了分析和研究,²⁶本文就侧重对九八《村委会组织法》在最近的一次,即二零零五年,村民委员会选举中的运作情况加以探讨。但是在此之前,还是有必要对村民委员会选举历史上具有标志性的选举作一简单的概述。首先要提及的是在八二《宪法》颁布之前两年,即一九八零年,中国出现的首批村民委员会的选举,包括广西宜州市屏南乡果作村村民委员会的选举,以及广西罗城、宜山县一些村庄的农民自发选举产生的村民委员会。这些村民委员会成立后,实行村务自我管理和民主管理,解决了农村经常出现的一些问题,取得了很好的效果。²⁷这些选举是在没有任何法律依据的情况之下,由村民自发创设的,具有一定的开拓性。第二要提及的是一九九三年吉林省梨树县所创造的上级领导不定调子,亦不划框子,把候选人提名的权利完全交给村民,由选民按照自己的意愿推荐候选人的「海选」方法。该县三百三十六个村委会在一九九三年全部实行了「海选」。²⁸这一创新的重要性在于虽然当时已经有八七《村委会组织法》,但是该法并没有规定直接选

²³ 参见:民政部网页,「村级民主选举」,下载于

http://www.mca.gov.cn/artical/content/CMZZ_SY/2003122991609.htm。

²⁴ 参见:《中共中央关于加强党的执政能力建设的决定》第五部分。

²⁵ 参见:《中国的民主政治建设》白皮书,第六章第三段。

²⁶ 例如:徐勇(主编),《乡村治理与中国政治》,中国社会科学出版社,2003年12月第1版;徐秀丽(主编),《中国农村治理的历史与现状:以定县、邹平和江宁为例》,社会科学文献出版社,2004年8月第1版;何增科等(著),《基层民主和地方治理创新》,中央编译出版社,2004年10月第1版;唐鸣等(著),《村委会选举法律问题研究》,中国社会科学出版社,2004年4月第1版;The Carter Center Report on Chinese Elections: Observation of Village elections in Fujian and the Conference to Revise The National Procedures on Villager Committee Elections, at: http://cartercenter.com/peaceprograms/540_cdcc.htm.

²⁷ 参见:注20。

²⁸ 转引自何包钢、郎友兴,《村民选举中的竞争:对浙江个案的分析》,《华中师范大学学报(人文社会科学版)》2000年第5期。

举，而且事实上当时大部分村民委员会都是由上级党委指定候选人，然后由村民进行确认性选举，因此「海选」开创了村民委员会直选的先河。

就二零零五年选举而言，根据民政部的资料，这是全国农村开展村民委员会换届选举比较集中的一年，截至六月底，全国有九个省份已经基本完成或全部结束新一轮村委会换届选举，有七个省份正在进行村委会换届选举，有五个省份将在二零零五年下半年展开村委会选举工作。²⁹在最近由民政部主持召开的一次全国村委会选举情况分析会上，与会代表认为近年来村委会选举呈现了三个明显的特点：其一是村委会选举工作的民主化、规范化程度不断提高，各级党委、政府领导和指导村委会选举的能力有所增强；其二是随着农村近年来各项改革的深化，农民的参选热情高涨，村委会选举的竞争性因此而逐渐加大；其三是各地在现有政策法规的框架内进行了大量的制度创新，并被认为在实践中都具有较高的参考价值。³⁰由此可见，村民委员会组织者对村民委员会选举制度的发展是持肯定态度的。

另据媒体报道，「海选」在二零零五年村民委员会的选举中又有了新的发展。浙江省杭州市余杭区唐家埭村的村民们在二零零五年三月二十七日以「自荐海选」的方式选出了「村官」，这是对九八《村委会组织法》规定村委会成员的候选人由村民直接提名的「海推直选」制度的创新，使「村官」选举制度又得到了新的突破。其创新之处在于，凡具备村委会成员任职条件和有志于村务管理、自愿为村民服务的选民，都可报名参加村委会成员的竞选。在选举中，选民既可以选举在选票上以姓氏笔画为序的「自荐人」，也可以选其他选民。由于「自荐人」不是候选人，所以「自荐海选」被认为是一种无候选人的直接选举。

「自荐海选」是对九八《村委会组织法》所规定的「海选」村民委员会主任和委员的最新演绎。这种方式既完全符合《村委会组织法》的规定，又比原来在全国许多地方广泛适用的「海推直选」要更进一步。用杭州市民政局基层政权处处长张宏国的话来说，「自荐海选」有两大优点：「一是改革了『海推直选』环节多、成本高的不足，弥补了『海选』无目标、得票散和无序拉票的缺陷，二是通过『毛遂自荐』式的报名参选，拓宽了村民群众选好当家人的渠道，搭建起了一个农村优秀人才发挥才干的平台」。³¹这一新的尝试也吸引了国务院发展研究中心，以及浙江省和余杭市民政局部门的关注，这些部门都有派人观摩这个全国首次举行的「自荐海选」村民委员会主任和委员的选举过程。国务院发展研究中心的研究员认为「此次杭州的大胆创新，对全国的村级选举均有一定的借鉴意义，开创了我国村委会选举方式的全新阶段」。³²

但是余杭的尝试是否完全是由村民自发组织，并且是完全反映了选民的真正民意呢？这从省民政厅基层建设处一位负责人在选举后对传媒发表的看法可以看出一点端倪。他说：「该方式通过组织对自荐人资格的审核，可以更好地把组织意愿与村民意愿相结合，选出村民和组织都放心的『当家人』」³³他的说话表明共产党的组织还是对自荐人的资格进行了审核。严格来说，由于村民委员会选举在性质上是属于社会选举，因此它应该完全是民意的反映，共产党的组织在村民委员会选举的组织方面和对自荐人的资格审核方面似乎不应该扮演任何角色，否则就会构

²⁹ 参见：民政部网页，「民政部在广西桂林召开全国村委会选举情况分析会」，下载于 <http://www.chinavillage.org/readnews.asp?newsid={25D2B725-D8F0-4AFC-AA61-3698F75B5319}>。

³⁰ 同上。

³¹ 参见：董华平，「浙江在全国率先采用『自荐海选』方式选举村官」，《今日早报》，2005年3月28日，2005年6月15日下载于 <http://www.southcn.com/news/china/zgkx/200503280354.htm>。

³² 参见：「全国首个『自荐海选』村官余杭选举产生」，2005年6月15日下载于 <http://mzt.zjol.com.cn/05mzt/system/2005/04/12/006090025.shtml>。

³³ 同上。

成对村民选举村民委员会主任和委员的一种限制。党组织的意愿只应该通过推荐候选人这一方式反映出来。

以上是有关农村村民委员会最新发展的正面的报道和总结。但是全国的发展是否都是这么乐观呢？作者带着这一疑问于二零零五年六月六日和七日对刚刚在五月结束所有村民委员会选举工作的广东省进行了实地考察和调研。由于时间关系，作者选择了一个贫穷县的贫穷镇（广东清远市清新县的某镇），和一个非常富有的市的富有的镇（东莞市某镇），作为考察对象，访问了刚上任的村委会干部、广东省省委派去贫穷村协助选举的工作组成员、以及清新县和东莞某镇负责或者了解选举工作的政府工作人员。

据广东省省委派去贫穷村协助选举的工作组成员的介绍，今年的村委会选举是广东省第三次选举（第一次是在一九九九年，第二次是二零零二年）。和前两次选举最大的不同是以前两次村委会选举都是由镇党委提供候选人名单，然后交由村里具有选举资格的选民去选举，产生村委会主任和村委会委员。但是广东省规定二零零五年的村民委员会选举一律不准由上级政府提供候选人名单，而是要由选民自己提名，即「海推」候选人，然后按候选人得票的多少确定正式候选人名单，再由选民投票选举产生村委会主任和委员。省委的决定完全符合九八《村委会组织法》和广东省人大所颁布的《广东省实施《中华人民共和国村民委员会组织法》办法》³⁴以及二零零一年《广东省村民委员会选举办法》³⁵的规定。

作者通过调查发现，所调研的两个镇在村民委员会选举的操作上完全不同。在清新县某镇，其选举在省委所派的工作组的帮助下，是完全执行省委的决定，即首先通过海选产生正式候选人，然后由选民在正式候选人中选出村委会主任和委员。但是在东莞市某镇则完全是由镇党委决定候选人名单，根本没有让选民自己提名候选人。作者调查所反映出来的问题是，九八《村委会组织法》在广东省不同地区的实施情况不仅不一样而且可以说是具有本质上的区别。为什么会出现如此大的区别呢？

最直接的原因是一个地方政府和党委自觉执行法律和地方性法规的问题。九八《村委会组织法》和二零零一年《广东省村民委员会选举办法》都明确规定了村民委员会成员候选人由本镇选民直接提名。但是只有立法并不够，还必须得依靠最基层一级政府，即乡镇人民政府和乡镇党委对全国性法律和广东省地方性法规的正确理解和执行。³⁶东莞市某镇的选举证明该镇完全没有遵守全国性法律和广东省地方性法规的规定，而是置法律法规于一边，由镇党委决定候选人。

为什么同一个省的两个不同的镇对有关村民委员会选举的法律和地方性法规的执行完全不同呢？这得看这两个镇有什么不同。它们最大的不同一个是省里最穷的镇和村之一，而另一个是省里最富有的镇之一。在穷的那个镇的某村的年集体收入不到三万元人民币；而东莞某镇上一年的集体收入是三亿人民币，其下属村的年收入数字也一定会比三万要多很多。贫穷村的村干部没有什么资源可支配，但是富裕村的村干部却可以支配相当可观的经济资源。作者在这次实地调研所访问的所有人，包括贫穷村刚当选的村长，都认为在贫穷村的选举中，选民和有能力的人对选举缺乏积极性主要是因为不能得到任何利益。选举是受利益驱动这一观点得到了一

³⁴ 一九九八年十一月二十七日广东省第九届人民代表大会常务委员会第六次会议通过，二零零二年五月三十日广东省第九届人民代表大会常务委员会第三十三次会议修订。

³⁵ 二零零一年九月四日广东省九届人大第二十七次会议通过。

³⁶ 至于党委和政府机构之间的关系将在下一小节中加以探讨。

些学者的认同，他们认为只有当选举是涉及到选民的切身利益时，选民对选举才会有积极性。³⁷。这里的选民既包括选举人又包括被选举人。那么选举的组织者，即乡镇人民政府，为何置法律和地方性法规于一边呢？原因可能有很多，但是作者认为最主要的原因之一仍然是「利益驱动」。虽然乡镇人民政府并不可以直接支配下属村的资源，但是却很有可能能够间接得益。

2.4 小结

根据以上对村民委员会选举制度和最新实践的讨论，我们可以看出，典型的村民委员会选举个案证明村民委员会选举在各方面的扶持和关怀之下正在逐步走向成熟，这不仅表现在选民的充分参与方面，而且表现在选举制度的设计（诸如候选人的提出等）方面。这是积极的一面。但是，除了二十世纪八十年代刚刚成立村民委员会时是由村民自发组织的之外，其他所有典型的村民委员会选举个案都是多方面努力的结果，具体包括党组织和地方政府部门，特别是民政部门的支持、学者的支持、甚至是外国民主力量的支持。在余杭区唐家埭村的个案中，还包括浙江省民政厅以及国务院有关部门的支持。因此，这些典型个案可以说都是国家和地方政府所树立的，它们的存在代表了村民委员会选举改革和发展的方向。不过，这些典型个案在目前的中国却并不具有代表性，甚至可以说还是属于个别现象。作者在广东省的实地调查也证明，中国广大农村在实行《村委会组织法》方面还很不一致。因此，在中国农村真正实现《村委会组织法》所规定的民主选举村民委员会主任和委员还有一段相当长的路要走。作者完全认同许多其他学者所提出的中国农村搞民主直选的可行性。但是，《村委会组织法》的颁布和实施，党中央、国务院等全国性政府机构，以及省一级人大及政府部门的支持都不能保证《村委会组织法》在实践中一定能够真正得到落实和执行。这是因为还存在着许许多多的其他因素在阻碍着真正民主选举的实现。而所有这些因素中，最主要的阻力来自于不同的既得利益者。因此，非常有必要在制度的设计上，扫除这些障碍。许多学者已经发表了不少专著和文章来论述村民委员会选举制度应该如何加以完善并提出了一些很好的建议。就选举制度的设计而言，本文作者认为，若这些学者所提出的建议都能够落实到实处的话，那么村民委员会选举制度已经是非常完美了。³⁸

但是，若只从选举制度本身出发来考虑问题还是过于狭窄，作者认为应该从更广的角度来探讨如何真正实现村民委员会的民主选举。首先，由于坚持党的领导在中国既是一项宪法原则，也是共产党的基本政策，党的领导地位是不容置疑的。因此，得从共产党党内着手，确保地方党委支持当地政府正确实施《村委会组织法》。而且共产党目前的做法是党委的一把手兼任同级人大主任，故当地方党组织不愿意严格实施《村委会组织法》时，也就决定了地方人大和政府也不会切实有效地执行该法。东莞市某镇的情况就可以证明没有地方党委自觉地支持和督促地方政府实施《村委会组织法》，村民委员会的民主选举是不可能实现的。其次，得从地方人大和地方政府着手。因为真正组织和领导村民委员会选举的是地方人大和政府机关。作者认为他们是最大的既得利益者，而往往他们是和地方党组织是很难加以区分的。不过，在宪政体制上，地方人大和政府是属于宪政架构之内的机构，因此可以通过宪政制度的完善来确保这两个机构在贯彻执行《村委会组织法》时能不受其既得利益的影响。具体来说，可以考虑成立独立的、没有任何利益关系的选举委员会来组织选举。再次，得消除现任村委会主任和委员的既得利益对选举的负面影响。作者认为这反而是最容易解决的问题，因为这完全是可以通过利益制衡来解决，即让村民充分认识到他们自己的利益并告知其捍卫其利益的方法，而最直接的方法就是选出一个真正能代表其利益的村委会。

³⁷ 参见：唐娟，「以 2003 年深圳区级人大代表竞选个案为例来看：公民自主性竞选人大代表的动因」，载于《人大研究》，2004 年第 1 期（总第 145 期），第 9—10 页。

³⁸ 例如：李凡主编了一本名为《中国选举制度改革》的书，其中就详细讨论了选举制度的设计，上海交通大学出版社，2005 年 1 月。

那么村民委员会民主选举制度的前途会是如何呢？由于有共产党的坚定支持，而且村民也逐步认识到了民主选举的好处，再加上民主制度本身的优越性，因此村民委员会民主选举的前途应该是一片光明的。

3. 人大选举制度

3.1 人大选举制度法律规范分析

人民代表大会制度是中国的根本政治制度，八二《宪法》把全国人民代表大会和地方各级人民代表大会定义为国家和地方权力机关。人民代表大会共有五级，具体包括全国、省、市、县和乡镇人民代表大会。八二《宪法》³⁹把五级人大的选举制度分为两类，一是乡镇和区县这两级人民代表大会代表由选民直接选举产生；二是市以上的三级人民代表大会代表由下一级人民代表大会选举产生。⁴⁰因此，中国人大代表的选举制度实行的是直接选举和间接选举相结合的方法。

人大选举制度具体是由《选举法》所规定。中国第一部《选举法》制定于一九五三年二月，它正式确立了中华人民共和国的选举制度。⁴¹这部《选举法》在文化大革命之前的运作是正常的，但是在文化大革命期间则和其他所有全国性法律一样，完全被束之高阁。文革结束后，为了切实有效地保障人民的选举权利，坚持和完善人民代表大会制度，中国共产党十一届三中全会决定修订《选举法》，以达到改革和完善选举制度的目的。一九七九年七月一日，第五届全国人民代表大会通过了中国第二部《选举法》，即一九七九《选举法》。和一九五三《选举法》相比，一九七九《选举法》有以下一些重大修改：(1) 将直接选举的范围首次从乡镇一级扩大到县一级；(2) 把各级人大代表由等额选举改为基本实行差额选举；(3) 赋予了选民和代表提名人大代表候选人的权利；(4) 规定全国和地方各级人大代表的选举，一律采用无记名投票的方法；(5) 对宣传候选人作了较民主的规定，推荐人大代表候选人的各党派、团体和选民都可以用各种方式宣传代表候选人；(6) 如果所提候选人过多，可以进行预选；(7) 将候选人以获得「出席」选民或代表的半数以上票当选，改为须获「全体」选民或代表的半数以上票当选。⁴²

蔡定剑指出，一九七九《选举法》是为了适应改革开放初期社会各界参政热情空前高涨的背景，该《选举法》所设立的选举制度的首要价值目标是民主。在众多的修改当中，他认为选民自由提名候选人、以各种方式介绍候选人、以及差额选举这些规定是比较民主的。⁴³另有学者认为，由于有关预选和可以采用各种形式宣传候选人这些规定可能会降低选举的效率，一九七九《选举法》在一定程度上是为了增强其民主性而不惜牺牲了选举的效率。⁴⁴

³⁹ 中华人民共和国总共制定过四部宪法，一九五四《宪法》，一九七五《宪法》，一九七八《宪法》，和一九八二《宪法》。而八二《宪法》又经过四次修正，即一九八八修正案，一九九三修正案，一九九九年修正案，和二零零四修正案。

⁴⁰ 参见：八二《宪法》第 59 条和 97 条。

⁴¹ 一九五三年《选举法》的主要内容请参见蔡定剑，「中国选举制度的历史和现状」，载于蔡定剑（主编），《中国选举状况的报告》，法律出版社，2002 年，北京，第 4-6 页。

⁴² 参见：蔡定剑，注 41，第 9-10 页；又见谢宝富，「当代中国选举制度若干问题分析」，载于《深圳大学学报》（人文社会科学版），2002 年第 1 期。

⁴³ 参见：蔡定剑，注 41，第 13-14 页。

⁴⁴ 参见：谢宝富，注 42。

一九七九《选举法》颁布后，又经过一九八二年、一九八六年、一九九五年以及二零零四年的四次修改和补充。八二修正案对人大选举制度最主要的修改之一是将一九七九《选举法》中规定的以各种方式介绍候选人修改为，在人大选举中，只能在选民小组会上介绍候选人，其目的显然是为了限制竞选。⁴⁵因此，学者普遍的看法是，从民主的角度来看八二修正案是一种倒退。当然，八二修正案也有其积极的一面，那就是对选举程序进行了适度的简化以体现对选举效率的适当重视。

和八二修正案相比，86修正案则被认为又朝民主化方向迈进了一大步。其主要修改包括：(1)减少了代表的名额，把全国人大代表的名额从三千五百以下减少到三千以下；地方人大代表的名额也大幅度减少了；(2)简化了选民登记手续，采用了选民只需一次登记，长期有效的原则；(3)把代表联合提名候选人的人数从三名选民或者代表改为十人以上；(4)为了确保必须实行差额选举，取消了过去直接和间接选举代表中通过预选确定正式候选人的做法；(5)降低了当选的票数，将直接选举时候选人获全体选民过半数的选票当选改为全体选民过半数参加投票有效，获得参加选举选民过半数的选票当选（即所谓的「两个过半数」当选的原则）。虽然一九七九《选举法》已经提出了选民联合提名候选人的权利，和差额选举原则，但是在选举中，预选在实际执行中往往变成了搞等额选举的借口，选举的提名权和差额选举原则并没有真正得到落实。因此，蔡定剑认为人大选举制度上的这两大改革是在八六修正案中才真正巩固下来。⁴⁶

九五修正案主要有以下修改：(1)通过缩小城市和农村人大代表所代表的人口数比例，使得选举更加平等；(2)在保证差额选举的条件下再次增加了间接选举的预选程序；(3)明确规定间接选举提名和酝酿代表候选人的时间不得少于两天，以确保代表有充分的时间提名和酝酿候选人；(4)明确规定不同代表团（小组）可以联合提名（「串联」提名）以及「等额提名，差额选举」的制度；(5)在选举时间、代表联合提名的人数、以及罢免和辞职程序等选举程序方面也作出修改。因此，蔡定剑认为九五修正案主要是对一些具体制度上的规定进行了完善，并对有些选举程序进行了修改，以提高选举的效率。⁴⁷

二零零四修正案的主要内容有⁴⁸：(1)对预选作出明确规定，若是直选，要求在所提候选人的人数超过法律规定的最高差额比例时，⁴⁹由选举委员会交各该选区的选民小组⁵⁰讨论、协商，并根据较多数选民的意见，确定正式代表候选人名单；但是当选民对正式代表候选人不能形成较为一致意见时，进行预选，根据预选时得票多少的顺序，确定正式代表候选人名单；⁵¹若是间接选举，则由各该级人民代表大会主席团将依法提出的代表候选人名单交由全体代表酝酿、讨论。如果所提候选人的人数符合《选举法》规定的差额比例，将直接进行投票选举；如果所提候选人的人数超过《选举法》规定的最高差额比例，进行预选，根据预选时得票多少的顺序，并按照《选举法》确定的具体差额比例，确定正式代表候选人名单；⁵²(2)为了回应增长中的民主需求，规定了代表候选人与选民见面，回答选民问题；⁵³(3)明确了「贿赂」的含义，使

⁴⁵ 参见：蔡定剑，注41，第16-17页。

⁴⁶ 参见：蔡定剑，注41，第18-20页。

⁴⁷ 参见：蔡定剑，注41，第26-28页。

⁴⁸ 参见：谢宝富，注42。

⁴⁹ 参见：修改后《选举法》第30条的规定。

⁵⁰ 选民小组这一概念在《选举法》中并没有作出明确的定义。

⁵¹ 参见：二零零四修正案第2条；修改后《选举法》第31条。

⁵² 参见：《选举法》第31条。

⁵³ 参见：二零零四修正案第3条；修改后《选举法》第33条。

之对该类违法行为的惩罚更具有可操作性；对国家工作人员增加了行政处分的类别，更加确实保障了选民和代表的自由选举权。⁵⁴

从以上对《选举法》历史发展的分析可以看出，一九七九《选举法》在经过四次修正、长达二十五年的发展之后，虽然是朝着选民充分行使民主选举权利的方向有了一定的发展，但是直接选举仍然还是停留在乡镇和县这两级，并不允许在另外三级人大进行直接选举。中国目前人大选举制度仍然是多层次的、以间接选举为主的、民主程度较低的选举制度。此为《选举法》的第一个特征。

《选举法》所呈现的第二个特征是，《选举法》中有不少法律规范都试图在两种不同的利益之间取得一种平衡。例如，直接选举是由同级人大常委会所设立的选举委员会负责，县级人大常委会负有指导同级和乡镇一级选举委员会的职权和义务。⁵⁵这样通过选举委员会成员的任命方式和其上级对下级的指导和领导关系确立了国家权力对选举的间接影响。但是另一方面，选举委员会行使选举管理职权时又受法律的规制和约束，⁵⁶而且选举委员会得「根据较多数选民的意見，确定和公布正式代表候选人的名单」。这一程序控制的目的是为了防止选举委员会任意干预或操纵选举。又如，《选举法》对县级以上的地方各级人民代表大会大会主席团的候选人提名权（代表联合提名权）的规定，代表对候选人的酝酿、讨论程序，以及预选中确定正式候选人的程序规定也充分体现了法律协调和平衡国家权力和自由选举权利两者关系的意图。有一种观点认为这种制度上的设计既预留了国家权力介入的空间，也设定了防止国家权力恣意行为的界限。⁵⁷但是作者认为，这些法律规范的主要目的显然是为了确保政府权力，特别是共产党，可以介入选举过程并对选举具有一定的控制和影响。共产党对选举过程的影响就是对选举民主的限制，这是不可取的。

《选举法》的第三个特征是从等额向差额选举的过渡并最后采用以差额选举为主体、等额选举为补充的选举制度。差额选举制度的采用被认为是中国选举制度改革十分重要的成果之一。⁵⁸等额与差额选举两种选举方式是不同民主程度的反映，和等额选举相比，差额选举更能保障选民的自由选择 and 真实意愿的实现，同时也能体现选举的竞争性。这是人大选举制度最具有民主

⁵⁴ 参见：二零零四修正案第5条；修改后《选举法》第52条。

⁵⁵ 参见：《全国人民代表大会常务委员会关于县级以下人民代表大会代表直接选举的若干规定》第一条，于：

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4429&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=WXZLK&pdmc=010602>；《选举法》第七条第二款。

⁵⁶ 参见：《全国人民代表大会常务委员会关于县级以下人民代表大会代表直接选举的若干规定》第二条。

⁵⁷ 县级以上的地方各级人民代表大会在选举上一级人民代表大会代表时，由各该级人民代表大会主席团主持（《选举法》第三十五条）。代表候选人由各该级人民代表大会主席团将依法提出后由全体代表酝酿、讨论，以及需要预选时由主席团按得票多少顺序确定正式候选人（《选举法》第三十一条第二款）；在各级人民代表大会选举本级政权领导人时，由本级人大主席团或代表联合提名候选人，（《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》第二十一条）如果提名的候选人数符合选举办法规定的差额数，由主席团提交代表酝酿、讨论后，进行选举。如果提名的候选人数超过选举办法规定的差额数，由主席团提交代表酝酿、讨论后，进行预选，根据在预选中得票多少的顺序，按照选举办法规定的差额数，确定正式候选人名单，进行选举（《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》第二十二条）。

⁵⁸ 参见：吴国光，「中国大陆的选举制度及其变革」，载于胡春惠（主编），《中台港三地选举制度和民主发展》学术研讨会论文集，2000，迦南印刷有限公司，第45页。

性的规定，可惜的是在实际运作中，有关差额选举的法律规定却往往被扭曲。⁵⁹《选举法》中有关预选及「讨论」、「协商」、「酝酿」候选人的规定有过几次反复，最后采用了二零零四修正案中的规定。其中预选被认为是给予共产党影响选举人意愿的程序，⁶⁰而「讨论」、「协商」、「酝酿」程序的实质则是「要求选举人对选举组织机关表达自己的投票意愿」⁶¹，因此有学者认为，归根到底，这些程序「都有替代选举的功能」。⁶²二零零四修正案有关预选的规定仍然保留了上述几种程序，这说明法律规范仍然是赋予了选举组织机关影响选举人意愿的程序。这是《选举法》的第四个特征。

现行《选举法》的第五个特征是平等原则与差别条款互为补充。《宪法》和《选举法》都明确规定年满十八周岁的中国公民平等享有选举权和被选举权，⁶³而且《选举法》第四条又具体规定「每一选民在一次选举中只有一个投票权」。这就是说每一选民在投票时具有平等权利，而不受差别对待。但事实上，选举过程并不一定能保证所有类别公民平等地获得代表的权利。而且在代表的名额分配上，《选举法》设定了城镇与农村间代表产生的不平等性：即县级以上人民代表大会的代表名额按照农村每一代表所代表的人口数四倍于镇每一代表所代表的人口数的原则分配。⁶⁴有学者指出，法律制度对城乡间选举差别模式的保护反映了我国存在着一些特殊的社会政治经济现状以及独特的选举权平等观念。⁶⁵另外，为了保证妇女、归侨和少数民族在人大中的代表性，《选举法》对这几类人士也采取了一些特殊保障。⁶⁶中国学者普遍认为，这种立法措施上的特别保护旨在促使实质平等的达成，对于选举权平等实现有着积极意义，但是也有学者持不同的意见。⁶⁷

根据以上讨论，从法律规范的角度来看，现行《选举法》所建立的人大选举制度并不是真正意义上的民主选举制度。通过制度和程序的设计，《选举法》确保了选举组织者介入和影响人大选举的可能性，使得选举结果并不一定反映选民的真实意愿。但是差额选举原则的确定及相关法律规范的完善为人大选举制度引入了竞争性选举的可能性。

⁵⁹ 如《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》规定政权机关正职领导进行差额选举，例外指出如果提名的候选人只有一人，也可以等额选举。但该规范的真实意图在实践中却往往被扭曲，正职领导通常实行等额选举。

⁶⁰ 参见：吴国光，注 58，第 41 页。

⁶¹ 同上。

⁶² 参见：吴国光，注 58，第 42—43 页。

⁶³ 参见：《宪法》第三十四条、《选举法》第三条第一款：「中华人民共和国年满十八周岁的公民，不分民族、种族、性别、职业、家庭出身、宗教信仰、教育程度、财产状况、居住期限，都有选举权和被选举权」。

⁶⁴ 参见：《选举法》第十二条第一款，第十三条，和第十四条。

⁶⁵ 早期的通说认为，城市是政治、经济和文化的中心，工人阶级相对集中，基于为工人阶级创造有利的条件以保证无产阶级的领导，必须对城乡之间的代表比例做出不同的。目前的学说则一方面承认现行选举制度下的选举权的平等是一种「形式上的不完全平等」，另一方面又认为正是通过这种形式上的不完全平等可以达到「实质上的平等」。然而宪法学者林来梵教授指出「从宪法学原理上来说，『实质上的平等』原则一般仅适用于对弱势社会群体的保护，目的在于恢复平等的法律关系。而从当今中国社会分层的客观现状来看，现行我国选举制度中有关城乡代表比例的差等措施，恰恰与该种目的之间构成了一种可谓南辕北辙的状况。」（参见：林来梵：《从宪法规范到规范宪法：规范宪法学的一种前言》，法律出版社，2001 年 5 月版，第 132—133 页。）

⁶⁶ 《选举法》第六条规定：「全国人民代表大会和地方各级人民代表大会的代表中，应当有适当数量的妇女代表，并逐步提高妇女代表的比例。全国人民代表大会和归侨人数较多地区的地方人民代表大会，应当有适当名额的归侨代表」；第九条第四款规定：「自治区、聚居的少数民族多的省，经全国人民代表大会常务委员会决定，代表名额可以另加百分之五。聚居的少数民族多或者人口居住分散的县、自治县、乡、民族乡，经省、自治区、直辖市的人民代表大会常务委员会决定，代表名额可以另加百分之五」。

⁶⁷ 参见：注 65。

3.2 人大选举制度政策分析

从政策层面来看，中国共产党在取得政权之前，曾明确提出过在夺取政权之后要搞真正的民主选举。⁶⁸但是在夺取政权之后，共产党则感觉到在一个贫穷、落后、人口众多的国家要立即实行真正的民主先进有很大的困难，不同的领导人在不同的场合都发表过中国不适合搞「普遍、平等、直接、无记名投票」选举的言论。蔡定剑把他们的理由概括为五点⁶⁹：(1) 中国人口众多，直接选举一时难以办到；(2) 农民人口太多，难以实行完全平等的选举，否则人大代表大多数会是农民；(3) 文化程度太低，不会写字，难以做到秘密投票；(4) 缺乏选举经验，人民群众缺乏对选举的认识和积极性；(5) 上述条件不具备，搞完全的民主选举会成为形式主义，共产党讲究选举的实质，不在选举方法上计较。由此可见，在执政初期，共产党是不认同搞直接选举的。

文化大革命之后，共产党认识到有必要并决定对政治体制改革的同时，也对选举制度进行改革，这导致了一九七九《选举法》的出台。改革的直接原因是当时党的领导人认为，扩大直选的范围以及增加选举的民主性可以使人民直接掌握县级人民代表大会，并间接掌握省人大和全国人大。这样一来，九亿人民就可以通过代表管理国家大事，掌握自己的、民族的和国家的命运，并认为选举制度的改革是防止文化大革命那样的悲剧再次发生的根本措施。⁷⁰由此可见，在二十世纪七十年代末期中国共产党的政策是真的希望发展民主选举制度的。到一九八七年中国共产党召开第十三次党代会时，当时的中共中央总书记赵紫阳在其所作的题为《沿着有中国特色的社会主义道路前进》的工作报告中花了很长的篇幅讨论政治体制改革，认为在中国进行政治体制改革的时机已经成熟，并对人大选举制度作出以下评论：⁷¹

「近年来，我国选举的民主程度正在不断提高。但是，选举制度还不够健全，已有的制度也还没有全面有效地贯彻。今后应当更充分地尊重选举人的意志，保证选举人有选择的余地。要继续依法坚持差额选举制度，改进候选人的提名方式，完善候选人的介绍办法。实践证明，在选举各种代表大会的代表时，硬性规定候选人的结构比例，不利于体现选举人的意志。为了使候选人具有较为广泛的代表性，今后除继续坚持按地区选举的制度外，可以辅之以按界别选举和其他方式产生部分代表的办法。」

由这一段论述可见，当时共产党对如何改革人大选举制度已经有了成熟的意见，并提出了当时选举制度中需要改革的地方。但是一九八九年六月四日「天安门事件」⁷²后，中国的政治环境变得相对紧张。就一九九零年的人大选举而言，中共中央除了指出要坚持四项基本原则、反对

⁶⁸ 参见：《毛泽东选集（合订本）》，人民出版社，1968年版，第969—970页，转引自蔡定剑，注41，第2—3页。

⁶⁹ 参见：蔡定剑，注41，第4页。

⁷⁰ 参见：彭真，「关于全国选举试点工作的几点意见」，载于《新时期的社会主义民主与法制建设》，中央文献出版社，1989年版，第38—43页；「地方人大常委会的工作」，载于《新时期的社会主义民主与法制建设》，中央文献出版社，1989年版，第56—58页；转引自蔡定剑，注41，第10—11页。

⁷¹ 参见：《沿着有中国特色的社会主义道路前进》报告的第五部分。

⁷² 这是指1989年学生在天安门广场要求民主和反对贪污的运动最后在同年6月4日被政府用军队从天安门广场强行赶走。

资产阶级自由化之外，仍然肯定了一九七九年以来的县乡人大选举中好的经验和做法，并坚持按照《选举法》所确定的原则来进行选举。⁷³但是客观上，一九九零年人大选举还是有一定程度的退步⁷⁴。而且共产党有关人大选举的政策也后退了。最好的证明就是江泽民在一九九二年召开的党的十四次党代会上所作的题为《加快改革开放和现代化建设步伐夺取有中国特色社会主义事业的更大胜利》的工作报告。他的报告虽然也有提及政治体制改革，但是篇幅非常短小，而且只是原则性地指出政治体制改革的目标是建设有中国特色的社会主义民主政治，绝不搞西方的多党制和议会制，但是完全没有提及人大选举制度。

一九九二年之后，中国的政治环境有所宽松。在一九九七年和二零零二年分别召开的党的第十五次和十六次党代会上，当时的中共中央总书记江泽民在其向大会所做的工作报告中都有专章讨论政治体制改革。就选举制度而言，他都有提到要「实行民主选举，民主决策，民主管理和民主监督，保证人民依法享有广泛的权利和自由，尊重和保障人权」。⁷⁵二零零四年党的第十六届四中全会又通过了《中共中央关于加强党的执政能力建设的决定》。该决定在延续十六大报告有关政治体制改革的基调的同时，强调了民主的制度化建设。作者的理解是制度建设包括人大选举制度的建设。二零零五年十月所发表的《中国的民主政治建设》的白皮书只简单地概述了人大选举制度，并没有对其改革提出任何政策指引。⁷⁶

因此，从共产党关于人大选举制度的政策来看，共产党是认同在人大选举制度中实行民主选举这一原则的。但是对于如何在法律和实践落实这一原则，以及何时应该进一步扩大直选的范围、给选民在选人大代表时更大的自主权方面，党的政策在1987年达到了高潮，但是可惜的是六四事件使得一九八七年制定的政策没有能够执行下去。作者认为二零零四年党的第十六届四中全会通过的《决定》又肯定了民主制度建设的重要性。不过由于该《决定》没有对人大选举制度提出具体的改革方向，再考虑到该《决定》强调要把党的领导和人民当家作主以及法治建设结合起来，这就意味着要在党的领导和人大选举制度的民主性之间加以平衡。至于如何加以平衡，或者说人大选举的民主性应该发展到什么程度，共产党目前则还没有明确的政策取向。所以人大选举制度的未来在政策上还具有很大的不确定性。

3.3 人大选举制度案例研究

早在一九八零年中国首次实行区县人大代表直选时，在北京的一些高校里，学生就掀起过竞选的高潮。当时仅北京就有近百名在校学生参加了竞选，最后有八名通过全体选民投票预选产生的学生候选人正式当选为海淀区人大代表。⁷⁷一九九二年四川泸州市的曾建余和一九九八年湖北潜江市的姚立法也都是主动通过竞选而当选为地方人大代表的。⁷⁸二零零三年被一些学者称

⁷³ 参见：蔡定剑，注 41，第 24—25 页。

⁷⁴ 参见：蔡定剑，注 41，第 25、26 和 30 页。

⁷⁵ 参见：中共十五大工作报告：《高举邓小平理论伟大旗帜，把建设有中国特色社会主义事业全面推向二十一世纪》第六部分；十六大工作报告：《全面建设小康社会，开创中国特色社会主义事业新局面》第五部分。

⁷⁶ 参见：《中国的民主政治建设》的白皮书第 3 章。

⁷⁷ 参见：王怡，「2003 年公民权利年」，《新闻周刊》2003 年第 47 期，第 20 页；罗立为，「谁是首批独立竞选人？」，载《南方周末》2003 年 6 月 12 日。转引自邹树彬、唐娟、黄卫平，「2003 年人大代表竞选的群体效应：北京与深圳比较」，载于《马克思主义与现实》，2004 年第 2 期，第 36 页。

⁷⁸ 同上。

为中国的公民权利年，⁷⁹同时也是最近的一次人大代表选举年。在这一年里，社会和传媒又再次关注普通公民参选人大代表的情况。和前几届人大代表选举不同的是，二零零三年在全国各地不仅有更多的公民主动参选人大代表，而且他们的参选更有组织、选举参选方式也更成熟。本节将选择区县级人大选举中几个广为传媒报道和学者评论的个案加以分析。

第一个个案是二零零三年湖北省潜江市人大选举。姚立法自一九七八年起在潜江市人大每届选举中都以自荐参选的方式竞选人大代表，并于一九九八年第四次参选时当选为潜江市人大代表。当年自荐参选的候选人总共只有两人。在作为人大代表的五年中，姚立法共提交了一百八十七份建议书监督政府。然而姚立法的存在却让当地一些领导官员大伤脑筋。⁸⁰在二零零三年湖北省潜江市第五届人大代表的换届选举中，除了政党和人民团体提名的候选人之外，姚立法再次以民荐候选人的身份参选，和他一起以民荐候选人宣布参选的候选人共有三十二名（包括他在内）。这三十二名民荐候选人中既有市和一些镇的人大代表，也有教师、村委会主任、村支部书记和工人等。他们都得到了由十名或以上选民联名支持而成为初步候选人，并随后展开了他们的竞选活动。但是在随后的「反复协商、酝酿」的过程中，他们中的大部分被「协商」掉了，只有两人出现在正式候选人名单中。在十一月二十八日的投票中，有选民在「另选他人」的栏目中投了这些候选人的票，其中有两位民荐候选人在「另选他人」的投票中和正式候选人一起，都因为不够半数而没有当选，按照《选举法》的有关规定，这两名候选人应该在随后进行的「另行选举」中作为正式候选人参选，但镇选区指导组以选民没有「选举意愿」而「自愿放弃」另行选举为由，没有进行另行选举，造成这两个选区代表的空缺。从最后结果来看，这三十二名民荐候选人无一当选。⁸¹选举结束后，姚立法和其他一些选民认为他们的选举权和被选举权受到了侵害，多次向潜江市人大常委会等部门提出申诉，姚立法也向当地法院提出了诉讼，但是法院不受理。姚立法于二零零四年一月十日上京向全国人大递交了一份申诉书，提请全国人大常委会就潜江市二零零三年市人大选举情况启动特别调查程序。⁸²到本文截稿之日，作者没有查找到任何机关，包括全国人大常委会，对潜江市二零零三年选举的调查和处理的资料。

第二个个案是深圳区级人大代表选举。⁸³深圳市区级人大代表于二零零三年四月至五月举行了换届选举，根据媒体的报道和其他学者的调查，共出现了七名主动联系选民签名推荐或毛遂自荐的候选人。黄卫平等三名深圳大学的学者对二零零三年深圳市区级人大选举作了调查研究。⁸⁴他们把这七名候选人分为「独立候选人」（或「民荐候选人」）和「自荐候选人」两种。前者是指由选民十人以上联名推荐的候选人；后者是指那种没有经法定程序成为正式候选人，但是自己通过向选民自荐而直接诉诸于选民，希望他们在投票时，在选票上「另选他人」一栏内选

⁷⁹ 参见：王怡，注 77。

⁸⁰ 参见：「落选人大代表上京递交申诉：替人民说话惹了谁？」，下载于：
http://news3.xinhuanet.com/newscenter/2004-01/13/content_content_1272302.htm。

⁸¹ 参见：李凡，「从潜江人大选举事件看中国基层民主的发展」，载于，《人大研究》，2004 年第 4 期。

⁸² 参见：注 80；又见：「姚立法提请人大调查选举，自荐候选人全军覆没」，下载于：
<http://cn.biz.yahoo.com/050117/16/68e9.html>。

⁸³ 区人大和县人大是属于同一级别。

⁸⁴ 参见：黄卫平、唐娟、邹树彬，「2003 年深圳市区级人大代表竞选现象的政治解读」，《北京行政学院学报》2003 年第 6 期；唐娟、邹树彬主编，《2003 年深圳竞选实录》，西北大学出版社 2003 年版；又见：Huang Weiping, Tang Juan and Zou Shubin, *Conscious Political Participation of Citizenry and Transformation of Electoral Institutions: A Case Study of the 2003 Competitive Election for Deputies to District People's Congress in Shenzhen*. SOCIAL SCIENCES IN CHINA, Spring 2004.

他而非正式候选人。⁸⁵。根据他们的调查，在这七名候选人中，⁸⁶有一名是中共党员、三名是民主党派人士、另三名是无党派人士。从提名的角度来看，这七名候选人中有两名是自己主动联系选民签名推荐并最终成为正式候选人；其他五名是以「另选他人」方式参选。而这五名候选人中又有三名当初是由选民联名推荐及由民主党派提名成为初步候选人但是在确定正式候选人过程中被淘汰了；另外两名是毛遂自荐。⁸⁷就教育水平和年龄而言，所有七名参选者都受过高等教育，其年龄介于三十五岁至五十岁之间。在经济实力方面，除了一名候选人之外，其余六名候选人都有较强的经济实力，估计年薪应该在十万元左右，在深圳应该是属于中产阶级。⁸⁸深圳大学黄卫平等三位学者的调查还发现，所有这七名候选人的竞选过程都不太顺利，这具体表现在两个方面，其一是其中三人在确定正式代表候选人的过程中被选区选举工作领导小组（事实上就是社区居委会）把他们「酝酿」出局。其二是选区选举工作领导小组或者阻挠他们参选，或者反对、禁止、甚至撕毁他们张贴的竞选海报。⁸⁹最后的选举结果是，除了那名是中共党员的候选人获选外，其余六名候选人全部落选。

第三个个案是北京市区县人大代表选举。北京市区县人大代表换届选举于二零零三年十二月份落下帷幕。根据媒体的报道，北京市全市共提出初步代表候选人 41,637 名，其中选民十人以上联名提出的初步代表候选人 40,906 人，占提名总数的 98%。在 6748 位正式候选人中，89% 是选民联合提名产生的（政党和人民团体推荐的只占 11%），其中最终当选的共有 3,662 人，占当选代表总数的 83.2%。⁹⁰北京市委区县换届选举工作领导小组副组长、北京市人大常委会副主任范远谋对媒体表示，在北京的这次选举中，选民可以自主行使选举权利，政府将充分尊重选举结果，只要选举符合法律程序，选举结果就应依法予以确认。⁹¹

虽然北京市有三千六百六十二名选民联名提出的初步候选人当选为区、县人大代表，但是新闻媒体报道的焦点，以及学者研究的注意力则主要集中在二十多名通过寻求选民的联合提名而参与人大代表角逐的候选人，包括高校学生、房地产维权业主和学者、律师等专业人士，其中不乏民间公众人物。⁹²在这二十多名候选人当中，只有私产维权者聂海亮和公共知识分子许志永高票当选，其他人都落选了。深圳大学黄卫平等三位学者对北京二零零三年区县选举中这二十多位候选人的参选过程进行了调查研究。他们发现，在北京的选举中出现了多个个人竞选选举

⁸⁵ 参见：唐娟，「从确认性选举转向竞选性选举：动因与意义—以 2003 年深圳区县人大代表竞选群体性案例为解读对象」，载于《政治学研究》，2004 年第 3 期，其文章的注 2 和 3。唐娟：「从确认性选举转向竞选性选举：动因与意义—以 2003 年深圳区级人大代表竞选群体性案例为解读对象」，载于《南京社会科学》，2004 年第 3 期。

⁸⁶ 公开见诸报端的有 6 名，他们是肖幼美、吴海宁、邹家健、叶原百、徐波、王亮；另外还有一位未经媒体披露的失业女性，叫谢潇英，参见：唐娟，注 85。

⁸⁷ 参见：唐娟，「从确认性选举转向竞选性选举：动因与意义—以 2003 年深圳区县人大代表竞选群体性案例为解读对象」，载于《政治学研究》，2004 年第 3 期，第 39-41 页。

⁸⁸ 参见：唐娟，注 87，第 41 页。

⁸⁹ 同上。

⁹⁰ 参见：崔红，「北京：804 万人投票直选说明人大代表的分量重了」，《北京晨报》，2003 年 12 月 11 日。

⁹¹ 同上。

⁹² 例如有以起草 204 条房产买卖合同而成名的房产维权律师秦兵，「中国打假第一人」王海，朝阳园业主委员会主任舒可心，以「反伪科学」为公众所知的司马南，联名上书全国人大对《城市流浪乞讨人员收容遣送办法》进行违宪审查的北京邮电大学教师许志永博士，热心青少年法律援助事业的律师佟丽华，著名维权小区—北京回龙观社区业主杜茂文、杨逢臣和聂海亮等等。详细讨论请参见，邹树彬、唐娟、黄卫平，「2003 年人大代表竞选的群体效应：北京与深圳比较」，载于《马克思主义与现实》，2004 年第 2 期。

办公室和专业助选团队，⁹³选举的策划性和组织化程度初显端倪。同时，竞选形式呈多样化，候选人大量利用张贴海报、散发传单、出动宣传车、召开记者招待会、网络对话等形式与选民进行互动，以增加选民对自己的竞选理念的了解。他们注意到竞选资金问题在北京的选举中也开始出现了。⁹⁴他们还发现，北京参选的公民的权利意识比深圳更高，其选举更有组织化，选举技巧更成熟。

这三个个案中的前两个的选举结果证明独立候选人和自荐候选人想当选为基层人大代表是非常困难的。至于第三个个案，虽然我们并不清楚那二十多位候选人中的大部分候选人落选的原因，但是该个案的结果也同样证明了独立和自荐候选人当选的困难性。需要指出的是，黄卫平等三位学者的研究结果是和上述的官方数据相冲突的。不过，即使官方的数据是正确的，我们也可以从上述三个个案的分析中得出以下结论，即独立和自荐候选人中的公众人物当选基层人大代表是非常困难的。

深圳大学的黄卫平等三位学者对深圳和北京二零零三年选举个案研究后得出了非常积极的结论。由于在深圳和北京都已经有一些人自主参选人大代表，因此他们认为中国的人大选举制度已经从确认性选举开始向竞争性选举过渡。⁹⁵至于诱发选民积极参与竞选人大代表的动因，他们认为包括以下几点：(1) 利益驱动；(2) 二十世纪九十年代以来的村民委员会选举和城市居民委员会的选举发展经验给群体性竞争现象的出现奠定了民主基础；(3) 中国二十多年的市场经济发展催生了一个新的社会群体：中产阶级，他们不仅有民主理念，而且有实施民主行动的能力；(4) 具有较强自主性的新闻媒体在选举期间发挥了重要的宣传、启迪、纽带、桥梁的作用；(5) 主持和领导人大选举的机关表现了理性、法治、克制、宽容和开放的姿态。⁹⁶

以上所讨论的三个个案首先证明，中国的选举制度正在逐渐地发生着变化。中国已经开始有人出来竞选乡镇和区县这两级人大代表。不过，我们要理性地看待和分析人大选举制度的演变。一方面，不可否认的是，人大代表选举迈出了公民主动竞选人大代表这可喜的一步。而且从公民竞选人大代表开始至今，公民主动参选人大代表的人数变化的幅度应该说还是让人有些鼓舞的。以潜江市人大代表选举为例，姚立法一九九八年当选人大代表那年只有两位公民主动以自荐的方式参选，但是到二零零三年换届选举时已有三十二名自荐候选人出来参选，这是十六倍的增长。若能以此速度增长下去的话，中国民主发展的步伐将是非常让人欣慰的。至于潜江市

⁹³ 例如：「舒可心公共（选举）事务办公室」、「杜茂文竞选后援团」等。

⁹⁴ 参见：邹树彬、唐娟、黄卫平，「2003年人大代表竞选的群体效应：北京与深圳比较」，载于《马克思主义与现实》，2004年第2期，第36页。

⁹⁵ 他们认为「中国乡镇一级人大代表和有下辖区的一些城市的区级人大代表的直接选举制度已经运行了50多年，县级人大代表直接选举制度也运行了20多年，但选举的竞争性内涵一直体现得很不充分。长期以来，我们的人大代表选举制度在其实质上是一种确认式选举制度，代表候选人一般由中共党组织或其他政党、人民团体提名推荐，通过法律程序确定为正式候选人，他们之间缺乏竞争性，因为基层的选举工作机构为了完成选举任务，一般要确保他们当选，选民实际上没有选择权，他们的投票行为在实质上是对于这些必须当选的候选人的一种确认形式。在这一游戏规则中，如果说候选人之间也存在着竞争的话，他们要竞争的主要是上级领导而非普通选民的信任，所以候选人与普通选民之间的关系是疏离的，普通选民主要扮演着被动的投票工具的角色，而且选民的投票行动不能担负着传达其利益偏好的功能，或者说，选民的投票行为并非他的利益选择行为，投票给谁与他的利益表达并不相关」。参见：邹树彬、唐娟、黄卫平，注94。

⁹⁶ 参见：唐娟，注87，第42页。在另外一篇论文中，他们有另外的表述：(1) 改革的市场化取向及其演进是公民自主参政的经济基础；(2) 社会利益多元化与多元利益表达政治化是公民自主参政的社会基础；(3) 民主与法治建设的长足进步，领导层执政理念与施政方式的转变，为公民自主参政提供了较为宽松的政治氛围和合法空间；(4) 开放、互动的公共舆论空间的初步形成为公民参政提供了话语平台和精神支持。详细讨论请参见：邹树彬、唐娟、黄卫平，注94，第36-37页。

为什么会有这么大幅度的增长，作者认为这主要是来自于榜样的力量，姚立法给潜江市人民树立了一个非常好的榜样。另一方面，在全国范围来讲，出来竞选基层两级人大代表人数的比例还不是很低，成功当选的比例则是更低。而且，象姚立法那样的榜样的力量能否持续下去也存在疑问。因为尽心尽职的姚立法在二零零三年落选了，如果媒体的报道属实的话，姚立法的落选是因为地方政府某些领导对选举的非法干涉所造成的，但是至今姚立法的申诉都没有得到任何党政机关的处理。这说明中国的选举制度中还没有任何机制来处理这一类选举违法行为，也说明现行的选举制度或者说现行制度下的某些官员并不希望或鼓励姚立法这样的人出来参选人大代表。在这种情况下，公民自愿出来竞选人大代表的积极性就会受到打击。深圳和北京的个案也都证明那些广为媒体报道的自荐候选人的选举过程都不是很顺利，有许多都受到了来自地方政府各种各样的阻碍。同时，我们也要认识到，直至目前为止，应该说全国大部分地区的乡镇和县一级人大的选举还是属于确认性的选举。作者在广东省的实地调查中发现广东两个基层地方的人大代表选举还是属于确认性的选举，而且这两个地方也没有出现任何改变目前选举安排的迹象和意图。⁹⁷由此可见，地方人大选举制度向竞争性选举过渡的路途还是很遥远的。

其次，这三个个案都说明共产党和相关的政府机关对公民竞选人大代表是采取了宽容与默许的态度。深圳大学的黄卫平等三位学者认为主持和领导人大代表选举工作的深圳市、区两级权力机关在二零零三年人大换届选举中虽然一开始面对民间自发的区人大代表参选和竞选活动有些不适应，但是基本上还是用理性、法治、宽容和开放的姿态来对待选民主动竞选人大代表这一现象，后来甚至为某些候选人的竞选做「参谋」。⁹⁸在选举结束后，深圳市人大对这些竞选行为给予了肯定，把它视为民主政治的一种有价值的尝试，并表示要顺其自然、尊重民意，并将对之进行研究，希望使基层人大代表选举更加公正、透明和民主，并以此推进政治文明建设。⁹⁹而北京又比深圳做得更好。北京选举委员会建立了比较规范的信息披露制度，如举行新闻发布会、让候选人与选民见面会，以及建立换届选举网站等。这些做法不仅提高了信息披露的程度，而且促进了与外界的良好互动。¹⁰⁰黄卫平等三位学者认为，北京之所以做得好是因为北京人大代表选举工作的组织者把现行选举制度理解为具有容纳「与时俱进的中国政治体制可能的改革空间」。¹⁰¹他们还认为北京对现行选举法律的诠释更具有权威性。即使在二零零三年湖北省潜江市选举个案中，中国传媒和一些农村选举研究专家们也认为姚立法虽然落选了，但是他已经算是幸运的了。¹⁰²这一观点一方面说明政府的宽容度增加了；但是另一方面也说明仍然有相当的一部分人认为公民竞选地方人大是有可能受到不好的对待的。

不过，党、政机关的「宽容与默许」也好，姚立法的「幸运」也好，都从反面证明中国在这之前对公民主动竞选人大代表并非是「宽容与默许」，而且有些参选者即使在二零零三年也可能并没有姚立法那么「幸运」。二零零三年深圳和北京的基层人大选举应该还是具有试验的性质。就全国范围而言，在二零零三年的人大选举中「宽容与默许」的比例应该还是有限的，否则深圳和北京的选举就不会吸引媒体和学者们的注意了。因此，作者认为我们并不能对人大选举改革的进程过于乐观。因为这一改革毕竟已经涉及到政府政权架构的选举改革，这在根本上是可能会影响到共产党的执政地位和方式的。所以共产党本身一定会非常小心对待这一改革

⁹⁷ 清新县就乡镇和县人大的候选人是选举法所规定的提名程序提名，然后由选举委员会通过协商确定正式的候选人，再交由选民选举产生这两级人大代表。在东莞某镇，镇人大代表的选举完全是由镇党委确定候选人，镇长和镇党委书记的候选人也是由上面决定。可以说是完全没有改革的迹象和想法。

⁹⁸ 例如：深圳市福田区人大甚至为王亮的竞选做了「参谋」。参见：唐娟，注 87。

⁹⁹ 参见：邹树彬、唐娟、黄卫平，注 94，第 35-43 页。

¹⁰⁰ 同上。

¹⁰¹ 同上。

¹⁰² 参见：余世存，「崔祥联的彩票和我的梦」，原载《北京之春》，下载于：

http://www.boxun.com/here/yushicun/42_3.shtml。

的。从前文对人大选举制度法律规范及共产党有关人大选举制度的政策分析我们已经知道共产党对人大选举制度的未来并没有确定明确的方向，而且现行法律规范还是允许选举组织者，而事实上是共产党，对选举过程的介入和影响。在共产党没有明确表示对人大选举制度进行改革之前，目前被「宽容和默许」的人大选举制度的改革对未来的启示作用还处于不确定状态。

第三，这三个个案证明利益驱动和权利意识是促使选民自荐竞争性选举的众多原因中的两个。黄卫平等三人认为选民缘于利益需求而自主竞选人大代表是根本性的原因。¹⁰³他们对深圳 7 位自荐参选者的访问证明这七位参选者大部分都有过维护自己所代表的特定群体的经济利益的经验，¹⁰⁴他们之所以参选，也是为了通过竞选人大代表来提升自己的政治地位和社会影响力，以利于更有效地维护自己所代表的特定群体的经济利益。¹⁰⁵相比较之下，根据黄卫平等三人对北京二零零三年选举的研究，北京市参选者的权利意识更高，他们当中很多都有法律背景，教育程度都很好，有的还有博士学位，许多也都有维权的经历。所不同的是，他们中有些是为了维护非常直接、现实的利益（例如业主群体），但是也有相当一部分参选者是为了维护社会普罗大众的利益，或者是为了尝试作为一个公民应当享有的权利，或者是由于对公共事务和政治领域富有激情、具有浓厚的济世情怀。¹⁰⁶他们具有相当高的参政热情和参政能力。这证明这些参选者的权利意识，特别是对选举权和被选举权的认识提高了，并开始认真对待法律所赋予他们的选举权了，这是另一个可喜的现象。

第四，深圳大学的黄卫平等三位学者认为推动从确认性选举向竞争性选举过渡这一制度变迁的深层动力是伴随中国社会利益结构的多元化而兴起的公民社会和公民主动地在现行制度框架内自下而上的政治参与。¹⁰⁷这就是说，公民社会的发展导致了制度内自下而上的自发的政治参与，并正在改变传统的确认性人大选举制度。和本文第二部分所讨论的自上而下的对村民委员会选举制度的改革相比，这种自下而上的对人大制度的改革，由于还没有得到共产党的肯定，在全国范围内推广和向上一级人大发展的难度就会大很多。这从二零零三年湖北省潜江市人大选举，特别是姚立法的参选经历就可以得到证明。

第五，第一和第二个个案都能证明现行的人大选举制度中有关确认正式候选人的程序，特别是「协商」、「酝酿」过程，会被用来排除选举组织者不「喜欢」的初步候选人，从而使这些初步候选人无法成为正式候选人，也就大大降低了这些选民当选人大代表的可能性。这一结果证明了前面法律规范和政策分析中已经得出的结论。若要想真正使人大选举制度民主化，就必须对目前选举程序中具有替代正式选举功能的程序进行改革，最好是取消这些程序。

第六，民荐和自荐候选人大都是民主党派人士或者无党派人士。这一现象在中国应该说是属于正常现象。因为若共产党员有意愿参选人大代表的话，他首先会争取得到共产党的提名。若成功得到共产党的提名的话，那么他成为正式候选人以及当选为人大代表的机会就会非常大。反之，他若通过民荐或者自荐方式参选的话，就得和共产党所提名的候选人竞争，而且会被认为不听从党组织的安排，这会影响到他的前途。因此，在目前的政治环境之下，作者认为有必要先搞好党内民主，具体来说就是提高人大代表候选人提名的民主性，这将间接提高人大代表的民主性。

¹⁰³ 参见：唐娟，注 87。

¹⁰⁴ 参见：邹树彬、唐娟、黄卫平，注 94，第 38-40 页；又见：唐娟，注 87，第 41 页。

¹⁰⁵ 同上。

¹⁰⁶ 参见：邹树彬、唐娟、黄卫平，注 94，第 35-43 页。

¹⁰⁷ 同上。

3.4 小结

人大选举涉及到国家权力机构的选举，因此在理论上人大选举制度是现行三种选举制度中最重要。人大选举制度改革的成功与否，会对共产党的执政地位和方式产生深远的影响。根据前文的讨论，共产党至今没有就人大选举制度改革的方向制定明确的政策，最多只是「宽容和默许」选民在现行人大选举制度之下参选人大代表，而没有主动对人大选举制度提出改革的方向和方案。黄卫平等学者认为，「在威权主义的社会中，任何的改革离不开与当局的互动，任何的进步都不能离现有的制度框架太远」。¹⁰⁸这一观点在中国是非常正确。作者认为一方面不能离现有的制度太远，另一方面，要充分使用现有制度已经赋予的权利。在目前的情况下，当越来越多选民认真对待宪法和法律所赋予的选举权和被选举权之后，现行选举法中所赋予的选举权和被选举权就有可能变得真实，而现有法律所规定的一些可以用来替代正式选举的程序的作用就会被削弱了。因此，本文作者一直主张中国人要认真对待宪法和法律所赋予的权利。

至于基层人大选举制度的未来，深圳大学的黄卫平等三位学者的观点是：

「现行文本制度中的民主精神，正在被越来越多的选民充分挖掘，选民联名推荐候选人和差额选举的法定权利正得到越来越多选民的自觉行使。这实际上给我们提供了一个重要启示：民主的发展和社会的进步不在于轰轰烈烈的整体推进，而在于一个一个最微不足道的个案积累和公民的自觉践行。在现行文本制度框架内，遵循个案的、渐进的和法治的路径，有可能走出一条独特的民主新路，即通过公民的实际竞选实践，推动对现行选举法规的新解释，并逐步修改、完善选举法规，使之逐步适应基层政治竞选发展的需要。」¹⁰⁹

本文作者同意他们所提出的在中国应该循序渐进地发展基层人大选举制度的观点，但是考虑到共产党在中国绝对的统治和领导地位，只是依靠自下而上的来自公民的竞选人大代表的实践来推动基层人大选举制度的发展，其步伐一定会非常缓慢，有时更有可能举步为艰。在中国，只有当共产党认可和推动人大选举制度的改革，并在选举过程中自我约束，做到不采用非正式的方式干预和影响基层人大选举时，基层人大选举制度才有可能发生本质的改变。若要希望中国共产党能够主动推动人大选举制度的改革，就必须证明人大代表的真正民主选举并不会威胁到共产党的执政地位，而只是可能会影响其执政方式而已。

至于整个人大选举制度的未来，基于前面的讨论，本文作者认为，由于基层人大代表选举目前还存在许多问题，最核心的问题就是选举并非真正反映了选民的选择，而且选举组织者对选举的干预和影响非常之大，因此选举制度的改革应该先从基层人大选举着手，而不必急于向上级人大扩展。从基层人大选举制度改革着手的最大好处是只会触及到地方党组织的领导方式，而不会影响到共产党在全国的执政地位。而且如果地方人大选举制度改革的好，还会有利于巩固共产党的执政地位。

最后需要指出的是，这里所讨论的人大选举制度只是关于人大代表的选举，而不是关于人大常委会主任和委员的选举。常委会主任和委员是由人大代表进行选举的，这是和政府机构领导人的选举制度完全一样的，将在本文下一部分中讨论。

¹⁰⁸ 参见：邹树彬、唐娟、黄卫平，注94，第35-43页。

¹⁰⁹ 参见：邹树彬、唐娟、黄卫平，注94，第42页。

4. 政府机构领导人选举制度

4.1 政府机构领导人选举法律规范分析

根据人民代表大会制度的理论，各级人民代表大会将选举产生同级各人民政府机关的主要领导，这被认为是国家权力来源于人民并最终受人民控制的根本保证。¹¹⁰具体来说，全国人民代表大会选举或决定以下一些最高国家机构的主要领导人员：(i) 全国人民代表大会常务委员会委员长、副委员长、秘书长、委员人选；(ii) 中华人民共和国主席、副主席；(iii) 国务院总理人选；(iv) 国务院副总理、国务委员、各部部长、各委员会主任、审计长、秘书长的人选；(v) 中央军事委员会主席；(vi) 中央军事委员会其他组成人员的人选；(vii) 最高人民法院院长；(viii) 最高人民检察院检察长。¹¹¹就选举程序而言，《中华人民共和国全国人民代表大会组织法》规定，全国人民代表大会常务委员会委员长、副委员长、秘书长、委员的人选，中华人民共和国主席、副主席的人选，中央军事委员会主席的人选，最高人民法院院长和最高人民检察院检察长的人选，由主席团¹¹²提名，经各代表团酝酿协商后，再由主席团根据多数代表的意见确定正式候选人名单；¹¹³国务院总理人选由国家主席提名；¹¹⁴国务院其他组成人员的人选由国务院总理提名；¹¹⁵中央军事委员会除主席以外的其他组成人员的人选由中央军事委员会主席提名。¹¹⁶中央各国家机关的领导人员的选举是采用等额选举。

根据八二《宪法》和《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》的规定，地方各级人民代表大会分别选举本级人民代表大会常务委员会的组成人员，和本级人民政府的正副职领导，具体包括省长、副省长，自治区主席、副主席，市长、副市长，州长、副州长，县长、副县长，区长、副区长，乡长、副乡长，镇长、副镇长，人民法院院长，人民检察院检察长。¹¹⁷至于提名权，同一《组织法》规定由本级人民代表大会主席团或者代表依照本法规定联合提名。¹¹⁸因此，不仅地方各级人民政府正副职领导都由同级人民代表大会选举，而且地方各级政权的主要领导人员的候选人提名权也由各该级人民代表大会通过主席团或者代表行使。

中央和地方各个政府机关的领导人员选举之间最大的不同是，中央一级领导人的选举都是等额选举，而地方政府主要领导人员选举是实行以差额选举为原则，等额选举为例外。地方政府领导人实行差额选举原则最早是由一九七九《中华人民共和国地方各级人民代表大会和地方各级

¹¹⁰ 参见：蔡定剑，《中国人民代表大会制度》，法律出版社，2003年6月第4版，第27—30页。

¹¹¹ 参见：八二《宪法》第六十二条的第四至八款的规定。

¹¹² 《中华人民共和国全国人民代表大会组织法》并没有规定主席团的产生办法，只规定了主席团的职责。

¹¹³ 参见：《中华人民共和国全国人民代表大会组织法》第13条。

¹¹⁴ 参见：八二《宪法》第62条的第5款。

¹¹⁵ 同上。

¹¹⁶ 参见：八二《宪法》第62条第6款。

¹¹⁷ 参见：八二《宪法》第101条；《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》第8条第4、5款，和第9条第6、7款。

¹¹⁸ 参见：《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》第21条第1款。

人民政府组织法》所确定下来的，¹¹⁹中间经过一些反复¹²⁰，现行法律条文是由该法的九五修正案所确定的。《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》第二十二条款第一款明确规定：「人民代表大会常务委员会主任、秘书长，乡、民族乡、镇的人民代表大会主席，人民政府正职领导人员，人民法院院长，人民检察院检察长的候选人数一般应多一人，进行差额选举；如果提名的候选人只有一人，也可以等额选举。」对得过半数选票的当选人数名额不足时举行另行选举，也实行差额选举，另行选举人民代表大会常务委员会副主任、委员，乡、民族乡、镇的人民代表大会副主席，人民政府副职领导人员时，也应进行差额选举。¹²¹但是在补选正副职地方各级政府领导时，则既可以采用差额选举也可以采用等额选举。¹²²由以上规定可见，除各正职领导候选人可例外实行等额选举和补选各正副职领导时可选择适用等额选举的规定外，都遵循差额选举原则。

和差额原则相关联的另一有关地方政府领导人选举的法律规定是预选。一九七九《组织法》规定在进行差额选举时，可通过预选来确定候选人再进行差额选举。但是八二修正案把这一规定修改为「选举可采候选人多于应选人数的办法，也可以经过预选产生候选人，然后进行选举。」学者对这一条的解释是，通过预选就可以搞等额选举。¹²³九五修正案再次引进了预选，但是其前提条件是必须是差额选举，也就是说，当提名的候选人人数超过法定的差额数时，应该进行预选，而不允许通过预选搞等额选举。因此，有学者认为，这样一来，间接选举中预选就成了确定正式候选人的一个法定的民主程序。¹²⁴

从有关中央和地方政府领导人，包括人大和一府两院的领导人，选举的法律规范可以看出，他们都是经过同级人大选举产生的，但是他们的选举方式却有着显著的区别。由于中央政府领导人的人选的决定过程有很大的可操控性，加上是等额选举，因此立法目的可以说是非常清楚，就是不希望在人选的确定和正式选举过程中出现任何意外，从而确保所提出的人选能够得到全国人大的确认而当选。就地方政府的正职领导人的选举而言，相关的法律规定也给等额选举留有一定的空间。但是对副职领导人的选举就明确规定要经过差额选举。这种不平等的法律规定显示各级人大作为权力机关在行使其选举同级政府机关领导人时的民主程度是不一样的。对于中央政府领导人和地方政府正职领导人的选举，有关的人大并不享有真正意义上的民主决定权，而对于地方政府副职领导人的选举，地方人大享有较大的民主决定权。

¹¹⁹ 一九五四年《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》没有对规定人大代表和地方国家机关领导人的候选人的人数作出任何规定。事实上，在1979年之前，候选人的人数总是等同于应选的人数。

¹²⁰ 一九八二修正案对地方国家机关领导人的选举作出了一重要修改，即将原法中规定的在进行差额选举时，可通过预选来确定候选人再进行差额选举，修改为「选举可采候选人多于应选人数的办法，也可以经过预选产生候选人，然后进行选举」。学者对这一条的解释是，通过预选就可以搞等额选举。参见：蔡定剑，注41，第16页。一九八六修正案最主要的修改是把「一府两院」的选举由以前的可差额选举，也可等额选举的规定，改为正职选举时，候选人一般应多1人，若所提候选人只有一名时，才可以等额选举。副职必须按1-3人的差额数进行选举。

¹²¹ 参见：《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》第24条第3款。

¹²² 《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》第25条规定「地方各级人民代表大会补选常务委员会主任、副主任、秘书长、委员，乡、民族乡、镇的人民代表大会主席、副主席，省长、副省长，自治区主席、副主席，市长、副市长，州长、副州长，县长、副县长，区长、副区长，乡长、副乡长，镇长、副镇长，人民法院院长，人民检察院检察长时，候选人数可以多于应选人数，也可以同应选人数相等。」

¹²³ 参见：蔡定剑，注41，第16页。

¹²⁴ 参见：蔡定剑，注41，第27页。

4.2 政府领导人选举政策分析

从政策层面来看，上述有关的法律规范实质上是关系到人大对政府领导人的民主任命权与党的领导之间的关系。在中央和地方政府领导人的选举制度来说，党的领导便具体表现为中国共产党的党管干部这一具体政策和原则与人民代表大会制度之间的关系问题。

党管干部是中国共产党的一项基本原则，是坚持共产党的领导这一中国宪法原则在实践中的具体反映。中共中央于二零零二年正式通过和实施的《党政领导干部选拔任用工作条例》（「《工作条例》」）就明确规定，选拔任用党政干部必须坚持党管干部的原则。¹²⁵有学者把党管干部的内容具体概括为两方面：一是党的领导机构和组织机构拥有干部的任用和管理权；二是党管干部包括分级管理和任用所有的干部。¹²⁶

该《工作条例》第四条规定：

「本条例适用于选拔任用中共中央、全国人大常委会、国务院、全国政协、中央纪律检查委员会的工作部门或者机关内设机构的领导成员，最高人民法院、最高人民检察院的领导成员（不含正职）和内设机构的领导成员；县级以上地方各级党委、人大常委会、政府、政协、纪委、人民法院、人民检察院及其工作部门或者机关内设机构的领导成员；上列工作部门的内设机构的领导成员。

县级以上党委、政府直属事业单位和工会、共青团、妇联等人民团体的领导成员的选拔任用，参照本条例执行。

选拔任用非中共党员领导干部，参照本条例执行。

选拔任用处级以上非领导职务，参照本条例执行。」

由此规定可见，条例的适用范围非常广泛，包括所有县级以上的干部，所有共产党的组织机构的干部，和所有的政府机关的干部，也包括所有的党员和非党员干部的选拔和任用。

从中国共产党的立场出发，党管干部的原则是不可以放弃的。因此问题就变成能否把党管干部原则和人民代表大会制度相协调，以及如何在坚持党管干部原则的前提下改革中央和地方政府领导人的选举？《工作条例》第四十三条规定「党委向人民代表大会或者人大常委会推荐需要由人民代表大会或者人大常委会选举、任命、决定任命的领导干部人选，应当事先向人民代表大会临时党组织或者人大常委会党组和人大常委会组成人员中的党员介绍党委的推荐意见。人民代表大会的临时党组织、人大常委会党组和人大常委会组成人员及人大代表中的党员，应当认真贯彻党委推荐意见，带头依法办事，正确履行职责。」这一规定显然是要求人大中的党组和党员服从和支持党委向人大所推荐的领导干部候选人。在目前各级人大代表中共产党员的比例占多数的情况下，在没有意外时，党委推荐的候选人应该是很容易当选的。

¹²⁵ 参见：《工作条例》第2条第1款。

¹²⁶ 参见：徐湘林，「党管干部体制下的基层民主改革」，《浙江学刊》2004年第一期；转引自 <http://www.chinaelections.org/readnews.asp?newsid=%7BB62A622B-202A-46AE-A9BC-86146A82368D%7D>。

不过《工作条例》在强调党的领导的同时，也认同民主选举程序的重要性，并把公开选拔、竞争上岗规定为党政干部选拔任用的方式之一。¹²⁷但是公开选拔和竞争上岗只适用于地方党委和政府工作部门领导成员，¹²⁸而且整个过程是在党委（党组）领导下进行的，最后的决定权也在党委（党组）。¹²⁹

因此，在政策层面上，共产党的组织掌握县级以上领导干部的任用权，人大选举政府领导人只是执行党的决定。但是对于县级以下政府干部的选拔和任用，则不受《工作条例》的约束，因此会具有较大的改革空间。二零零五年十月发表的《中国的民主政治建设》的白皮书并没有对各级政府领导人选举制度改革提供任何政策指引。

4.3 基层政府领导人选举案例分析

就乡镇长、区县长的选举而言，全国各地通常的做法可以概述如下：首先是由共产党的组织部门对干部进行考察并听取一些群众的意见，然后由同级党委集体研究决定候选人，推荐给人大主席团，人大主席团再把党所推荐的人选正式提名给人大作为候选人。虽然不能禁止人大代表行使法律赋予他们「联合提名」候选人的权利，但是实际主持选举的党组织的习惯做法是，一旦真有选举人自行提名没有被党组织提名的候选人，党委通常会用政治手段极力动员自行提名者撤回提名，或者迫使被提名者放弃参选。因此事实上，共产党通常是垄断了提名权，人大代表联合提名候选人的法定权利往往是被党委排除了。¹³⁰这一做法的前一部分是符合法律规定的，也是遵从《工作条例》来做的，但是后一部分党委动员自行提名者撤回提名以及迫使被提名者放弃参选的做法则既不符合法律的规定，也不符合《工作条例》的规定。

但是自一九九八年以来，这一传统的做法在乡镇和县一级政府领导的选举过程中已经受到了挑战，并引起了中外学者的关注。在《中国大陆乡镇选举方式改革研究》¹³¹一文中，深圳大学管理学院当代中国政治研究所课题组的四位学者把一九九八年至二零零一年中国乡镇一级的一些改革尝试作了归纳，认为出现了五种不同的选举乡镇长的模式。作者在调研过程中又发现了两种新的模式。本文作者将这七种模式分成两类：一是在遵守现行法律规范的同时有所创新的模式，二是对现行法律规范有所突破的模式。现概述如下：

(1) 遵守现行法律规范的模式

在七种模式中，唯一完全符合现行法律规范的模式就是「直接提名和选举」模式。四川省绵阳市一九九八年底在全市十个县（市、区）中选择了十一个乡镇进行乡镇人代会代表直接提名选

¹²⁷ 参见：《工作条例》第49条第1款。

¹²⁸ 参见：《工作条例》第49条第2款。

¹²⁹ 参见：《工作条例》第51条。

¹³⁰ 参见：「关于人代会『联合提名』问题的探讨」（一组文章），原载《法学》1999年第8期；引自《新华文摘》，1999年第12期。转引自邹树彬，「乡镇长直选与乡镇人大的角色转换」，载于《人大研究》，2003年第4期，下载于：<http://www.world-china.org/06/0603052606.htm>。

¹³¹ 参见：黄卫平、邹树彬、张定淮和杨龙芳，「中国大陆乡镇长选举方式改革研究」，载于《当代中国研究》2001年第4期（总第75期），下载于：<http://www.world-china.org/04/0402112202.htm>。

举乡镇长的改革探索。¹³²绵阳市依据《地方各级人民代表大会和地方各级人民政府组织法》的规定，¹³³，在十一个试点乡镇将所有的乡镇长候选人都改由本镇的人大代表联署提名，共提出候选人二十三人。在这十一个乡镇的乡镇长选举中，有三个乡镇的人民代表只提出一名候选人，其选举是等额选举；其余八个乡镇的乡镇长选举都是差额选举。在整个选举过程中，主持选举的组织部门不定调子、不作提示，统一限制时间，抽签确定顺序，由人大代表自由提问。正式投票选举时，设立了秘密划票间，使人大代表可不受干扰地按自己的意志投票。投票结束后则当场公开唱票，宣布选举结果并颁发当选证书。¹³⁴试点乡镇的选举结果是，七个乡镇的乡镇长获连任，其余四个乡镇选出了新的乡镇长，全部为中共党员。¹³⁵

(2) 突破现行法律规范的模式

「直选」

在突破现行法律规范的选举模式中第一个值得介绍的是被称为中国直选乡长第一案的「步云乡」乡长选举。¹³⁶一九九八年底，四川省遂宁市市中区步云乡进行了一场「直选乡长」的试验。在区党委的支持下，步云乡人大主席团制定并通过了《遂宁市市中区步云乡选民直选乡人民政府乡长试行办法》（「《试行办法》」）。根据《试行办法》的规定，任何三十名选民可联合推荐乡长候选人一名，全乡共推荐候选人十五名。然后，由村干部、村民代表、村民小组干部、乡人大主席团成员、以及乡党政负责人共一百六十二人组成的选区联席会议对这十五名候选人投票预选，提名得票最多的两名候选人为正式乡长候选人，再加上由共产党提出的一名候选人，共三名正式候选人参加这次乡长直选。经过十三场竞选演讲后，由全乡有投票权的选民投票（六千多名），选出了该乡第十二届人民政府乡长，乡人民代表大会人大对选民选出的候选人乡长用鼓掌通过了一个决议，承认选举有效。这样，一九九九年一月四日，中国诞生了第一位由选民直接选举的乡长，也可以说是第一位由选民直接选举的政府官员。¹³⁷

该直选模式引进了竞选机制，坚持了彻底的票决制，以一人一票的方式直选产生了乡长。但根据现行宪法和选举法的规定，选举乡长是乡人大的职权，所以步云乡的改革与现行体制的差别较大，有违宪的嫌疑。¹³⁸

「三轮两票制」

一九九九年深圳市龙岗区大鹏镇在镇长换届选举中，进行了「三轮两票制」镇长选举制度改革试点。大鹏镇的具体做法是：（1）将全镇党政机关、镇属企事业单位和各村、居委会按选民人数划为十七个推选小区，各小区召开选民大会，以无记名投票方式，由选民按照候选人条件¹³⁹

¹³² 参见：中共绵阳市委组织部，「抓住关键，确保乡镇人民代表直接提名选举乡镇长试点工作圆满成功」。转引自黄卫平、邹树彬、张定淮和杨龙芳，注 131。

¹³³ 《地方各级人民代表大会和地方各级人民政府组织法》第 21 条规定：「乡、民族乡、镇的人民代表大会有代表十人以上书面联名，可以提出本级人民代表大会主席、副主席，人民政府领导人员的候选人。」

¹³⁴ 参见：黄卫平、邹树彬、张定淮和杨龙芳，注 131。

¹³⁵ 参见：注 132。

¹³⁶ 对步云乡整个选举过程的详细描述，参见：李凡，注 10。

¹³⁷ 参见：黄卫平、邹树彬、张定淮和杨龙芳，注 131。

¹³⁸ 同上。

¹³⁹ 两个具体条件是（1）候选人必须获得 100 票；（2）候选人年龄不得超过 50 岁。

推荐一名镇长人选，共有七十六人被推荐为镇长的候选人，其中现任镇长李伟文得票最高，为 3,323 张选票，占全体选民投票总数的 65.8%；¹⁴⁰（2）镇党委对六名获得一百张以上选票的参选者进行了资格审查，将其中符合参选条件的五名参选者确定为镇长候选人的初步人选；然后让他们在由全镇党员、干部、职工和村民户代表共一千零六十八人参加的大会上发表竞选演说。在竞选演说结束以后当场进行民意测评，由全体与会者当场投票选出一名得票最高的参选者。该参选者再经镇党委审议、确认后，作为唯一的候选人推荐给镇人大。当时得票最高的是李伟文，共得 813 票，支持率为 76%；（3）大鹏镇第十一届人代会第一次会议举行大会，正式选举李伟文为新一届大鹏镇人民政府镇长。¹⁴¹在三轮投票中，第一轮是公众民意票，第二轮是代表性民意票，因此学者把它们统称为民意推荐票，而第三轮是法定选举票，因此被称为「三轮两票制」。¹⁴²

有学者认为大鹏镇镇长的选举模式开创了没有触动由人大选举政权领导人的现有体制而进行民主选举镇长的道路，是一种创新。该模式将人民代表大会制度的间接民主形式与人民群众的直接民主形式相结合，将坚持党的领导与充分发扬民主相结合，是既坚持在现行体制内搞民主选举改革，又对现行选举制度作出了重大突破。¹⁴³由于该模式把在前两轮投票中得票最多的人作为唯一的正式候选人推荐给镇人大，这否定了其他人大代表联合提名镇长候选人的法定权利，因此本文作者认为它仍然有突破现行法律规范之嫌疑。

「民推竞选」

这是一种于二零零四年十一月在浙江省衢州市柯城区姜家山乡出现的新的选举乡长的模式。「民推竞选」乡长首先是通过全区领导干部「公推」、当地乡村干群代表「群推」、和区委全委会「优推」这三个环节，产生初步乡长候选人三名。然后，柯城区委组织部组织这三名初步预备人选到全乡各片区发表竞职演讲，接受村民的提问和质询，再由符合条件的全乡村民及乡机关、直属单位工作人员投票产生出两名初步乡长候选人。最后，由姜家山乡人大主席团主持召开乡人民代表大会会议，按法定程序确定两名正式候选人，经竞选演讲后，由全体人大代表差额选举产生乡长。¹⁴⁴

这种模式把「三轮两票制」中由选民推荐镇长候选人改为通过「公推」、「群推」和「优推」三个环节相结合来推荐候选人，把「三轮两票制」中由镇党委根据民意等额确定正式候选人改为由全乡村民及乡机关、直属单位工作人员投票产生出两名乡长候选人预备人选。因而这种模式似乎更能体现民意，也更具有竞争性。但是这一模式也没有让乡人大代表行使联合提名其他乡长候选人的权利，因此也有突破现行法律规范的嫌疑。

「海选」

海选这种肇始于农村村委会选举的直接民主浪潮近年来被推及到基层政府的乡镇长选举中，而正当浪潮在乡镇政府领导选举中方兴未艾时，其浪头又迅速波及县级政府的县长选举中。二零零四年十月齐齐哈尔首先拉开了「海选」县长的帷幕。其具体做法是把干部选拔的「提名权」

¹⁴⁰ 在全镇 5,259 名选民中，实际投票的有 5,048 人，实际收回有效票为 5,039 张。

¹⁴¹ 材料转引自白益华：「改革选举制度扩大农村基层民主一兼评深圳市龙岗区大鹏镇镇长选举制度改革经验」，《马克思主义与现实》，2000 年第 3 期。

¹⁴² 参见：黄卫平、邹树彬、张定淮和杨龙芳，注 131。

¹⁴³ 同上。

¹⁴⁴ 这是作者的研究助手郑磊在浙江调查所发现的最新模式。

交给群众，即由群众提名候选人，然后由「用人单位」—富裕县的中层以上干部，现场提问、民主测评、并当场由县中层以上干部「海选」（全体投票）出第一轮六名候选人，并当场宣布结果；然后再经过差额考察等程序，最后选出的县长。三十九岁的王兆宪是黑龙江省第一个通过这一新的程序而当上了当上了县官—齐齐哈尔市富裕县的县长，的人。¹⁴⁵具体负责干部工作的市委副书记杜吉明认为，齐齐哈尔市目前已逐步形成了以「民主推荐、公开测评、群众提名、差额考察、票决产生」为核心内容的干部选拔任用的基本规程，充分落实群众的知情权、参与权、选择权和监督权，用公开、透明确保选举的公平、公正。其中，「群众提名」是关键环节。¹⁴⁶官方媒体认为这是直接选举在基层政权中实践的更高发展，是民主实践不断推向深入的表现。¹⁴⁷

这一模式严格来说并非海选县长，而是「海推」县长候选人，而且行使「海推」权力的并非所有该县的有选举权的人民，而只是该县中层以上的干部。在此基础上，再根据现行法律的规定由人大选举产生县长。这一模式中确定县长候选人的方法也有突破现行法律规定的嫌疑。

「公推公选」

四川省南部县在一九九八年十月至十二月二十七日的乡镇长换届过程中对全县七十九个乡镇的一百七十八个副乡镇长的职位实行「公推公选」。在这次「公推公选」中，县委制订了「公推公选副乡镇长候选人竞选办法」，规定了参选资格、条件和具体操作步骤。在镇人大正式选举前，共有一千零五十七人分别通过组织推荐、群众举荐和个人自荐的方式，报名参加「公推公选」，经县委审定有六百八十九人符合基本条件而成为初步候选人。他们在由县委、县政府、县人大、县政协负责人组成的评委组面前进行了公开的竞争性答辩和演讲，其演讲题和答辩题是从组织部门提供的三千余道答辩题和五百余道演讲题中抽签选择的。此外，每个初步候选人还必须再回答评委和乡人大代表各三个提问，然后由评委和代表评分；根据得分对每个副乡镇长职位产生一名得分最高的优胜者作为正式候选人，再由乡镇人大代表十人以上联名从得分较次者中提出另一位正式候选人；最后由乡镇人大代表进行差额选举，当场公布选举产生的副乡镇长。全县共有一百七十五人由此方式而当选为副乡镇长，其中原任副乡镇长者四十六人、原为行政机关干部者五十一人、原为事业单位干部者十五人、教师十二人、事业单位聘用人员三十六人、市县聘用干部七人、企业管理人员四人、村党支部书记四人。同时，十名上届政府的副乡镇长在此次「公推公选」中落选。¹⁴⁸这一模式没有完全取消乡镇人大提名乡镇长副职的权利，而只是对该权利作出了限制，即只允许乡镇人大代表提名一名候选人。虽然这比前面几种模式要好一些，但是严格来说，也有对人大代表的提名权作出了限制。

二零零三年下半年，江苏省委组织部在全中国第一次实施「公推公选」县长和市长。公推公选的程序是，二零零二年十月十七日，常州市委书记对公推公选工作进行动员部署，二十日报名

¹⁴⁵ 参见：崔士鑫，「齐齐哈尔『海选』县长：把『提名权』交给群众」，《人民日报》，2004年10月19日，第10版。

¹⁴⁶ 同上。

¹⁴⁷ 同上。

¹⁴⁸ 参见：中共四川省南部县委组织部，《四川省南部县公推公选副乡镇长资料汇编》；刘喜堂，「关于乡级民主发展的调查与思考」，载于《经济社会体制比较》，2000年第2期。转引自黄卫平、邹树彬、张定淮和杨龙芳，注131。

结束后，有关部门对报名者进行资格审查¹⁴⁹，然后由常州全市一千一百多名副处级以上干部进行第一轮投票民主推荐，六十多名在职副局级以上干部进行第二轮投票，选出七名候选人。他们是常州地区五十九名报名参加竞选市长的参选者中的佼佼者，是中国第一批「公推公选」市长候选人。¹⁵⁰十一月一日，七名初步候选人正式进入金坛市撰写调研报告。七日后进行演讲答辩，并接受专家评审和民意测验，在此基础上确定三名初步候选人。十一月十一日，江苏省委组织部考察组对三名初步候选人进行考察。十一月二十三日，常州市市委第九届九次全体会议以无记名投票表决方式决定吴晓东为金坛市市长正式候选人。十二月十七日，金坛市第十四届人大常委会第八次会议，通过无记名投票表决，吴晓东全票通过，被任命为代市长。¹⁵¹在这一模式中，市人大常委会的提名权被否决了，因此也有突破现行法律规范之嫌疑。

「信任投票」

山西省临猗县卓里镇在镇主要负责人换届选举前，于一九九九年四月一日至十八日组织了一次全体选民对镇党委、镇政府和镇人大主要负责人的信任投票。选票有三个选项，信任、基本信任、不信任。主持这次改革的临猗县委制定了《关于对卓里镇主要干部进行民意调查的实施方案》。该方案规定，信任票和基本信任票不过半数者不得成为下届镇党政、人大领导成员的候选人；信任票和基本信任票不足六成者，由上级党委责成专人与其谈话，给以诫勉，亮「黄牌」警告；信任票和基本信任票不足七成者，上级党委组织部门要进一步了解情况，帮助其改进工作；信任票和基本信任票超过85%者，县委给以通报表扬。在举行「信任投票」前，先后在镇和村两层广泛地宣传有关的法律，全面介绍三位将接受民意调查的干部的基本情况和近三年的政绩，还召开了一次公开的镇主要负责人述职报告大会。会后还将三位镇主要负责人的基本情况和述职报告的主要内容发到各村民小组供讨论评议。在完成上述准备工作后，四月十八日在全镇分设十七个民意调查投票点，由村民、干部、职工对镇主要负责人进行信任投票，同时进行镇人大代表的换届选举。投票结果是，三人的信任票和基本信任票之和均超过投票选民的90%。¹⁵²由于此模式规定信任票和基本信任票不过半数者不得成为下届镇党政、人大领导成员的候选人，这有可能会与镇人大代表行使提名权的结果相冲突。

(3) 分析与评论

七种不同的选举基层政府领导人模式的出现表明，全国不同的地方政府在地方党委的支持下已经开始尝试基层政府领导人选举的不同模式，以期找出一种最符合中国民主发展的模式。首先值得讨论的是基层政府领导选举制度改革的诱因。直接参与了步云乡直选策划的一位学者指出，原因之一是中国许多地方干部们都想争中国政治体制改革的第一。¹⁵³上文所提及的七个改

¹⁴⁹ 据常州市人才评价推荐中心报名点的负责人介绍，根据省委组织部的决定，这次公推公选的选拔对象条件非常严格，候选人必须45岁以下，大学本科以上学历，同时还必须是市辖市、市直属机关正副处级领导干部，或区县党政副职领导干部，其中副任职须满两年以上。参见：<http://www.urbanstudy.com.cn/culture0007/index.asp>。

¹⁵⁰ 参见：<http://www.urbanstudy.com.cn/culture0007/index.asp>。

¹⁵¹ 同上。

¹⁵² 当天共有9,240名选民参加了信任投票，占卓里镇登记选民的97.8%。镇党委书记孙建国获信任票8,318张，基本信任票530张；镇长杨雅女获信任票8,209张，基本信任票660张；镇人大主席王振国获信任票8,147张，基本信任票623张。参见《临猗县委对卓里镇主干进行民意调查活动资料》；牛伟宏，「乡级民主建设的新突破——对『两票制』选举乡镇主要领导的思考」，《改革内参》（北京），1999年第16期。转引自黄卫平、邹树彬、张定淮、和杨龙芳，注131。

¹⁵³ 参见：李凡，注10，第196、220—222页。

革尝试都被认为在某一方面是中国的第一例。有学者认为这种争做第一的「冲动」可能会是冲破政治改革障碍的一个重要因素，从而有可能在中国推动未来的政治大变革。¹⁵⁴虽然不可能排除这种可能性，但是如果这是基层政府领导人选举制度改革的真正的或者主要的诱因的话，提出改革的地方领导人并不是真正为了选举制度的民主化而进行选举制度的改革。那么其改革的成效能否持续也就值得怀疑了。

其次，在这七种模式中，只有一种模式，即四川省绵阳市所试行的「直接提名和选举」模式是完全符合现行法律规范的模式。另外六种模式或多或少都对现行法律规范有所突破。作者在清新县某镇的调查中，有人大代表认为镇长还是由选民直选更好，因为这样会更民主。但是同时也存在另一种不同的意见，例如某村刚当选的村委会主任就认为镇长由镇人大选举更好。他的理由是村民大部分都不熟悉镇长候选人，而人大代表由于经常和镇政府接触，因此会对镇长候选人相对比较熟悉。而镇长的候选人是由组织决定的，而不是选民所提名的。¹⁵⁵由此可见，普通选民对现行选举政府领导人的制度也有不同的意见。

这所引发的一个问题是，是否一定要突破现行法律规范，甚至是宪法规范，基层政府领导人选举制度才会有前途呢？根据八二《宪法》和《中华人民共和国地方各级人民代表大会和地方各级人民政府组织法》的规定，各级政府机关都是由同级人大所选举产生的。因此，政府机关的领导都是间接选举的产物，也就会存在类似人大间接选举的弊端。但是这是由人民代表大会制度本身的性质所决定的。人民代表大会制度在本质上是议会制，而议会制的特点之一就是由议会产生政府。只要中国不对人民代表大会制度作任何实质性的修改，那么间接选举和产生各级政府机关领导人就不可避免。

一些研究政治学的学者认为应该尝试对现行的宪法和法律中有关选举的规范加以突破，社会也应该对这些尝试采取包容的态度。¹⁵⁶本文作者作为一位法律学者则认为首先应该考虑在现行宪法和法律规范允许的范围之内对现行的选举制度加以完善。若现行的选举制度确实是民主选举的障碍的话，那么也应该先对现行的选举制度加以修改，然后再进行选举。一切的一切都应该在合法的原则下进行。四川省绵阳市所试行的「直接提名和选举」模式证明，在现行体制之下，地方政府领导人的选举还是有可能做到既符合人民代表大会制度的要求，又符合民主选举要求的。

而以上六种突破现行法律规范的选举改革模式在实质上都是对人民代表大会制度，即议会制，的突破。本文作者并非认为人民代表大会制度不应该或者说不需要修改，恰恰相反，作者觉得人民代表大会制度有许多地方是可以考虑修改的。但是由于中国共产党在所有的文件中都始终如一地强调要坚持人民代表大会制度，人民代表大会制度的本质，即议会制的本质，在可预见的将来是不会改变的。因此，作者认为任何对人民代表大会制度的改革建议都不应该违背议会制的本质。在步云乡的「直选」过程中，人大只对选民选出的候选人用鼓掌通过了一个决议，承认选举有效，人大的作用是象征性的。这正是为什么有学者质疑选民「直选」乡镇长的合宪性，因为《宪法》和《组织法》规定乡镇长由乡镇人大选举产生，而不是由选民「直选」产生。一九九九年一月十九日《法制日报》头版发表署名文章，论述步云乡的直选是违法和违宪

¹⁵⁴ 参见：李凡，注 10，第 222 页。

¹⁵⁵ 这是作者在广东省调查的发现。

¹⁵⁶ 参见：李凡，注 10，第 220 页。

的。¹⁵⁷后来，中共中央也曾经发文件，不允许搞直接选举，这就是为什么步云乡在二零零一年换届选举中只是通过直选选出乡长的候选人，然后把该候选人拿到人大去通过。¹⁵⁸

其他五种对现行法律规范也有所突破的模式，都是对候选人的提名方面的突破，而没有否定人大对候选人的最终决定权。因此，也就得到了共产党的默认。「民推竞选」、「公推公选」、以及「海选」这三种方式主要可能会有两个问题，第一是如何确保在「民推」、「公推」、和「海选」过程中，推选正式候选人的程序和结果是合法、公平和公正的。因为在这过程中，党组织、其他政府组织、以及个人都有权推荐「候选人」，如何在它们推荐出来的候选人中确定正式候选人可能会是一个问题。一旦正式候选人确定之后，第二个问题将是如何通过合法的途径将这些正式候选人以符合宪法和法律规定的的方式提出来，而同时又不会削弱人大的职权，并不给人们留下人大只是「橡皮图章」的印象。这也是一个棘手的问题。严格按照人民代表大会的理论，只有同级人大主席团才有权确定正式候选人。但是在姜家山乡试行的「民推竞选」、南部县和常州市试行的「公推公选」、以及齐齐哈尔所试行的「海选」过程中，都是由其他的组织机构来确定初步候选人，然后交给人大主席团去确定和认可。这种做法的坏处包括：(1) 选择初步候选人程序的合法性存疑；(2) 人大主席团沦为「橡皮图章」，而没有真正行使宪法和法律所赋予它的权力。其好处是所以被确定的初步候选人的民意基础都较强。

再次，这七种模式中另一值得注意和探讨的问题就是党组织在选举中的作用。非常明显的是，中国共产党的地方组织在六种模式中（除了「直接提名和选举」模式以外）的作用是非常明显的。这是和共产党的一贯政策，即党管干部，相一致的。首先是在确定初步候选人时，党组织已经在起积极的作用。其次是人大主席团通常都是由地方党组织所控制的，因此可以说党组织事实上是控制着正式候选人的提名权。由于中国共产党第十六届四中全会的工作报告强调加强党的执政能力的建设，在这种实际情况下，要求实行多党制是不切实际的。但是另一方面，共产党也强调要依法治国，实现社会主义法治，而且「实行法治」、「保障人权」都已经根据共产党的决定写入了《宪法》，因此作者认为共产党的高层是希望共产党的一切所作所为都应该是符合法治原则和保障人权的原则的。而中国学者的共识是法治首先应该是宪治，即依宪治国。作者不认为共产党应该退出政府领导初步候选人的提名程序，而是应该用合宪和合法的方式介入提名程序，即是说共产党应该在宪政制度内运作，而不是在制度外运作。

谁也没有说在四川省绵阳市的「直接提名和选举」模式中共产党没有参与，但是只要共产党的参与是符合宪法和法律规定的，是在制度内运作的话，反而是值得推荐和学习的。有学者认为绵阳市试行的模式「充分利用了现行选举法和组织法赋予选民和人大代表的提名权利，大大突破了现实政治运作的惯例，并放弃了执政党对选举人和候选人产生过程的操纵，因而不仅改善了乡镇长选举的民主化程度，而且也朝着加强和完善人民代表大会制度的方向迈进了一步」。¹⁵⁹不过，在事实上，绵阳市对选举的控制还是很明显的，例如，在选举过程中并不允许候选人「拉票」。有学者认为这就导致了普通选民对乡镇长选举的参与程度还很有限，以及整个选举过程的竞选色彩较淡。¹⁶⁰本文作者则认为其背后的真正原因还是地方党组织希望能够控制选举的结果。

根据本文前面对党管干部原则的讨论，我们知道该原则意味着党对干部的任用享有决定权。而在人民代表大会制度之下，人民代表大会对地方政府领导人的任命享有决定权。这样一来，党管干部原则和地方政府领导人民主选举制度就会存在不可调和的矛盾。因此必须对党管干部原则和人民代表大会制度两者中至少一个或者两个都作适当的修改以消除两者之间的冲突。

¹⁵⁷ 参见：查庆九，注9。

¹⁵⁸ 参见：李凡，注10，第236页的注1。

¹⁵⁹ 参见：黄卫平、邹树彬、张定淮和杨龙芳，注131。

¹⁶⁰ 同上。

本文作者的建议为，一、在党管干部原则不可动摇的情况下，可以考虑党的组织仍然享有提名地方领导初步候选人的权利，但不是对地方领导人的最终决定权；二、保留人大代表提名初步候选人的权利，或者取消此权利而把它交给选民；三、对《组织法》作出修改，规定把所有初步候选人都交给有选举权的选民进行预选，按照《组织法》所规定的最高差额选出正式候选人；四、把预选所产生的候选人交给人大，由人大选举产生地方政府领导人。

那么中国地方政府领导人选举制度的前景会是如何呢？作者带着这一问题于二零零五年六月初对广东省清新县和东莞市某镇进行了调查。通过调查，作者发现这两个地方政府并没有在乡镇一级的选举上面作任何改革的尝试，到作者调查之日止也没有准备作任何尝试的想法。清新县人大常务委员会认为选举改革应该循序渐进。作者相信中国大部分地方政府的选举都是和作者调研所到之处的情况差不多，还是按照传统的方式在选举地方政府领导人，共产党的地方组织基本上仍然决定和控制着地方政府领导人的任命。虽然在全国出现了一些改革的案例，但是上述这一基本情况恐怕在不久的将来还不可能改变。在这种状况下，作者认为首先应从党内民主着手，依照《工作条例》规定的办法来挑选干部。然后逐步过渡到社会民主。

5. 共产党党内选举制度改革

根据前面三章对中国三种不同的选举制度的讨论，我们不难发现中国共产党在选举中，特别是在人大代表的选举和政府官员的选举中，具有举足轻重的作用。党管干部的原则决定了共产党在干部候选人(包括人大和政府各部门的干部)的确定方面直至他们的任命方面都具有直接的影响力。若共产党的组织机构，特别是其领导机构的运作不民主的话，那么其所推荐的干部候选人也就不是民主制度的产物。这就是说，共产党党内的民主程度会直接影响和决定着人大和政府官员选举结果的民主性。因此，有必要对中国共产党的选举制度加以讨论。

根据经过二零零二年修订的《中国共产党党章》的规定，中国共产党党内选举制度可以概述如下。党的最高领导机关是党的全国代表大会和它所产生的中央委员会。党的地方各级领导机关是党的地方各级代表大会和它们所产生的委员会。党的各级委员会向同级的代表大会负责并报告工作。¹⁶¹党的各级领导机关都应该通过选举而产生。¹⁶²因此，党内的选举制度包括党的代表大会代表的选举和党的中央和地方各级委员会委员的选举。党的各级代表大会的代表和委员都要通过无记名投票的方式选举产生。候选人名单要由党组织和选举人(党员)充分酝酿讨论后产生。选举可以采用差额选举的办法直接进行，也可以先通过预选产生候选人名单，然后再进行正式选举。¹⁶³在中央，中央委员会全体会议选举产生党的中央政治局、中央政治局常务委员会和中央委员会总书记，中央委员会总书记必须从中央政治局常务委员会委员中产生。¹⁶⁴在地方上，党的地方各级委员会全体会议选举常务委员会委员、书记、和副书记。选举结果得报请上级党的委员会批准。¹⁶⁵在党的基层组织，则根据工作需要和党员人数并经上级党组织批准，可以分别设立党的基层委员会、总支部委员会、支部委员会。基层委员会由党员大会或代表大

¹⁶¹ 参见：《中国共产党党章》(「《党章》」)第10条第3款。

¹⁶² 参见：《党章》第10条第2款。

¹⁶³ 参见：《党章》第11条第1款。

¹⁶⁴ 参见：《党章》第22条第1款。

¹⁶⁵ 参见：《党章》第27条。根据同一条的规定，党的地方各级委员会的常务委员会，在委员会全体会议闭会期间，行使委员会职权；在下届代表大会开会期间，继续主持经常工作，直到新的常务委员会产生为止。

会选举产生，总支部委员会和支部委员会由党员大会选举产生。¹⁶⁶同样，基层党组织的不同委员会所选出的书记和副书记也得报上级党组织批准。¹⁶⁷

由上述条文可以看出，中国共产党党内选举的整体设计和人民代表大会的选举制度非常类似，包括候选人的预选也非常类似。根据前面对人大选举制度的讨论，我们知道当先产生候选人名单再进行选举时，往往就变成了等额选举。¹⁶⁸党内选举和人大选举最大的不同之处在于，下级党组织的领导人（包括书记和副书记）的选举结果必须报请上级党委批准才能生效。这反映了在党内，上级党委对下一级党组织的领导人的任命有决定权。上、下级党组织之间的关系是领导与被领导的关系。

在二零零三年，就有传媒报道，中国国家主席胡锦涛已将党内民主改革摆上了议事日程。¹⁶⁹最近，又有外国传媒报道，中国的四川省所有乡镇一级党委都被要求在原则上要在二零零五年十二月的选举中通过民主选举来产生党委书记。该报道认为中国共产党目前正在搞党内（选举）改革，似乎是在设计中国的一党民主制度，其目的是为了回避一党政治最终被抛弃的命运。¹⁷⁰事实上，中国共产党基层和地方党组织的选举改革早在二十世纪八十年代末就已经开始了，并在全国各地有不同形式的试点。¹⁷¹

党内第一项改革是对党的代表大会的改革。这一改革体现在两方面。其一是党的代表大会常任制试点。从一九八八年开始，包括浙江省在内的五个省的十二个县、市先后开展了这一试点工作。其中首个开展试点的是浙江省台州市椒江区。¹⁷²改革的核心是把党的代表大会的代表变成了常任代表，从而可以每年都召开一次党的代表大会。¹⁷³其二是党的代表的选举改革。最根本的改革是由所有党员直接选举党代表。四川省雅安市于二零零二年十二月举行的党的代表大会制度的改革试点被认为是中共历史上第一次县级党代表直选。¹⁷⁴与直选相配套的程序上的改革包括「自愿报名」和「竞争承诺」两个程序。¹⁷⁵另外一些关于党代表选举改革的尝试包括：（1）减少了代表的名额，在试点的区县，代表名额一般都减少了 20% 以上；（2）划小了代表选举单位，从而便于党员更好地了解和监督代表候选人；（3）扩大了代表选举差额比例，都在 40% 以上。¹⁷⁶试点单位对实行党的代表大会常任制的褒贬不一。有的认为改革有利于发挥党代表大会的作用和扩大党内民主；也有的认为常任制运作的成本太高，而且有可能会影响党内决策的效率。¹⁷⁷

¹⁶⁶ 参见：《党章》第 29 条第 2 款规定。

¹⁶⁷ 参见：《党章》第 30 条。

¹⁶⁸ 参见：上文 3.1 节的讨论。

¹⁶⁹ 参见：香港《大公报》：党内民主改革摆上议事日程，<http://www.gmw.cn/03pindao/guancha/2003-06/030611/030611-12.htm>。

¹⁷⁰ 参见：Benjamin Robertson and Wang Boyong, "China Tackles 'threat' of voting spreading", Scotland on Sunday, Sunday 18 September 2005, at <http://www.scotsman.com/?id=1955902005>.

¹⁷¹ 参见：白皮书第 8 部分。

¹⁷² 参见：李志宏：关于党代表大会常任制试点工作的调查，载于《党建研究内参》，2003.02 期，<http://www.diyi.com.cn/share/viewdiyinc.asp?id=477>。

¹⁷³ 同上。

¹⁷⁴ 参见：「激活党内改革试点 四川成中国政改试验田」，2005 年 06 月 09 日 11:05，凤凰网，http://news.memail.net/050609/120_2_1525872_00.shtml。

¹⁷⁵ 目前，党代会常任制试点在四川已扩大到一个市和十七个县区。根据中共十六大提出的要求，就是要通过试点，逐步使市、县党代会成为充分有效的同级党的最高决策机关和最高监督机关，市、县党委每年必须向它报告工作。详见注 174。

¹⁷⁶ 参见：注 172。

¹⁷⁷ 参见：注 172。

第二项改革是对村党支部的选举改革。早在一九九七年辽宁省沈阳市辽中县就试行过党员大会直接选举村党支部书记，并得到了中组部的肯定。¹⁷⁸从那以后，全国不同的地方都在进行村党支部的选举改革试点。在二零零零年，中共中央在全国范围内积极推进「村党支部领导班子成员选拔任用制度的改革」¹⁷⁹其后，改革的步伐比之前更快了，并出现了三种不同的模式。第一种是「两推一选」，即先由党员和群众分别从党员中推选候选人，然后，由党员投票产生支部成员。¹⁸⁰第二种是「两票制」，即在村党支部选举时，先由村民群众投信任票，再由党员投票正式选举。它在形式上虽然稍有不同，但是在实质上和上述的「两推一选」差不多。「两票制」的核心是通过群众投信任票的方式重新建立对党组织的信任。¹⁸¹第三种是「公推直选」，即由党员和群众公开预选村党组织书记的初步候选人，经乡镇党委审核后择优提名两名正式候选人，再通过竞职演说，在党内进行差额选举直接产生党组织书记。¹⁸²这三种选举改革的共同之处在于村级党组织的选举不再被看作是共产党的内部事务，村党支部成员不仅要取得党员的支持，而且必须获得大多数非党员群众的支持。事实上在有些地方，尽管正式选举仍在党员内部进行，但数量上占绝对多数的非党农民在村级党组织选举中事实上发挥了近乎决定性的作用。¹⁸³第三项改革是对乡镇党委选举和乡镇及县党委的改革。乡镇党委的选举改革主要是乡镇党委委员和书记的直选试点。自四川省成都市新都区木兰镇于二零零三年十二月七日通过「公推直选」选出了全国第一个由直选产生的镇党委书记之后，¹⁸⁴全国其他的一些省份的地方党委也开始了或即将开始类似的选举改革。¹⁸⁵而镇党委和县党委改革的焦点则主要在党委的常委是否需要保留。湖北省罗田县于二零零五年把沿袭了四十七年的县委常委会在改革中大胆取消了，取而代之的是由县党代表大会直接选出的全委会，作为党代会的常设机构，领导党的日常工作。¹⁸⁶有评论认为，当县委常委的职能被县委全委委员取代后，其实际权力的来源发生了根本的变化，从上级党委转到了县党代表。¹⁸⁷

需要指出的是，上述三种改革试点中的后两种是和《中国共产党党章》的有关规定相冲突的。但是所有上述的三种党内的改革试点都是在得到中共中央组织部的同意下进行的。这说明中国共产党的高层认为有必要在党内搞选举改革。那么改革的目的是什么？这从中共中央委员会总书记胡锦涛在二零零五年四月的一次讲话可以找到答案。他在讲话中指出，「要坚持发扬党

¹⁷⁸ 参见：杨海峰、房廷彦，「沈城乡镇党委改选换届试行党代表直接选举方式」，《华商晨报》，<http://www.nen.com.cn/77970767572107264/20050830/1749500.shtml>。

¹⁷⁹ 同上。

¹⁸⁰ 参见：东方网 12 月 20 日，「山东省试行村党支部直接选举取得实效」，<http://www.siica.org.cn/eastday/node4796/node12163/node12166/node12183/userobject1ai731890.html>。

¹⁸¹ 参见：徐勇，重建政治信任的有益探索——读《乡村选举中的「两票制」》，<http://www.weiqian.org.cn/data/detail.php?id=3463>。

¹⁸² 参见：注 174；又见：「『公推直选』的现实意义——奉化市农村党组织选举制度改革的思考」，<http://www.zjol.com.cn>，2004 年 10 月 11 日，浙江在线新闻网站。

¹⁸³ 参见：「山东：五千多个村试行直选支书」，http://news.xinhuanet.com/mrdx/2005-09/26/content_3544135.htm。

¹⁸⁴ 参见：「成都开全国先河 639 名党员直选出镇党委书记」，<http://www.chinaelections.org/readnews.asp?newsid={C8F5F99A-D7E1-4A18-B496-52920FBFBAE7}>。

¹⁸⁵ 参见：注 174；又见：「泗洪试验：1.4 万党员直选乡镇党委」，<http://www.chinaelections.org/readnews.asp?newsid={01BE8DED-934C-42AD-945E-9EA66B43E042}>；又见注 178。

¹⁸⁶ 参见：「党内民主改革重大举措：县委无常委」，http://www.qzwb.com/gb/content/2005-06/05/content_1671372.htm。

¹⁸⁷ 同上。

内民主，走群众路线。党内民主是党的生命……」¹⁸⁸党内是否有民主被认为是关系到党的生命力，即党的存亡的问题。而党内民主的核心内容之一就是党内选举制度的民主。二零零五年十月发表的《中国的民主政治建设》白皮书对党的代表大会制度、当地委员会全体会议、以及党内选举制度的改革都作出了肯定，并提出要「适当扩大差额选举的比例，逐步扩大基层党组织领导班子成员直接选举的范围」。¹⁸⁹同时，白皮书还提出「以发展党内民主带动人民民主的发展，是中国共产党民主执政的重要内容」。¹⁹⁰由此可见，党内选举改革的目的是逐步扩大党内的民主，包括党内选举制度的民主性。

6. 选举问题分析及中国选举制度的未来

从前面第二至第四部分对中国的三种选举制度的讨论可知，这三种选举制度都处在改革过程中，有许多问题值得我们详细和深入地加以研究。许多中、外学者已经对中国选举制度中的不少问题，特别是选举规范和过程的设计，都作出了深入的研究和分析。在此，作者想在前面四部分论述的基础之上，对以下几个和三类选举制度都有关系，但是其他学者着墨较少，而作者有一些不同看法的问题进行更深一步的阐述。

6.1 党组织、行政机关和选举

在众多的问题中，党组织与政府组织之间的关系问题以及党组织在选举中的角色问题既是非常重要的和敏感的问题，又是中国三类选举制度必须面对的问题。从上文对三类选举制度的讨论中可以看出，这两个问题在每一类选举制度中都有出现，而在村民委员会选举制度和政府领导人选举制度中尤其突出。

6.1.1 党组织和行政机关

从宏观的角度来看，党组织和行政机关之间的关系也就是通常所说的党政关系问题。在最基层的村一级，就是涉及到村党支部书记和村民委员会主任之间的关系问题。这一问题严格来说并不是《选举法》通常所讨论的问题，而应该是宪法和政治学所关注的问题。不过由于中国目前有关村民委员会的选举制度是由《村委会组织法》所规定，而该法对农村党组织和村民委员会的关系有所规定，再加上这一问题会直接影响到村民委员会的选举及其运作，因此有必要对此问题加以进一步阐述。

广东省的做法是希望并动员党员出来参选村委会主任，若当选的村委会主任是党员，那么还可以通过任命该党员为村党支部书记的方式来避免村主任和村党支部书记可能出现的冲突。在清新县的调研中，作者发现某村新当选的村委会主任并不是党员，而原来被上级看好的候选人没有能够当选为村委会主任。在这种情况下，镇党委决定从镇党委派一名党员去该村担任党支部书记，并事实上通过做该村六十八名党员的工作而成功使得该名下派的党员当选为该村的党支部书记。

这种做法只是一种尽量避免村主任和党支部书记之间矛盾的方法，但是并没有解决矛盾。而且由于该村党支部书记的候选人是镇党委派下来的，该村的党员选举完全是走形式，因此这种做法给人的感觉是在共产党党内并没有真正实行民主。但是这种做法和共产党在党政关系方面的政策是一

¹⁸⁸ 参见：胡锦涛在山东潍坊寿光市保持共产党员先进性教育活动党员干部会议上的讲话，2005年4月8日，http://210.31.67.98/yjs/home/bx/bx_study_hsd.htm。

¹⁸⁹ 参见：白皮书第8章。

¹⁹⁰ 同上。

致的。和二十世纪八十年代末期不同的是，现在中国共产党已不再强调党政分工，而是在各级政府，都强调加强党的领导。具体做法是由党委书记担任同级人大常委会主任，从而加强对各级人民政府机构的领导。

但是若村委会主任和村支书不是同一个人，而且两者之间真的出现冲突时该如何解决呢？清新县某镇某村刚当选的村委会主任认为应该请示镇领导加以解决。由此可见，该村委会主任对自己的职责和权力并不是十分清楚，也并不是十分了解村支书和村委会主任之间究竟应该是怎样的关系。这也是中国农村普遍存在的问题。但是在东莞某镇的调研中，该镇的被访问的人认为在该镇所管辖的村中也出现过村委会主任和村支书之间产生矛盾的情况，应该是村支书说了算。但是他认为当两者之间的矛盾不可调和时，而且村委会主任就是不听村支书的话时，应该是撤换村支书，这也是该镇通常的做法。因为村委会主任必须得通过正常的法律程序，即罢免程序才可以撤换，这比较复杂也比较困难。而撤换村支书只要通过党内程序即可。

本文作者认为必须正视村一级党政之间的关系，即村委会主任和村支书之间的矛盾。共产党作为执政党应该派自己最得力的党员去参选村委会主任，而该党员应该被任命为村支书。即使该党员不担任村支书也没有关系，因为他是党员，在党支部内他应该听村支书的。但是当共产党所派的党员没有能够成功当选为村委会主任时，最好的办法是发展该村委会主任入党。若能成功游说的话，那么也能避免村支书和村委会之间可能产生的冲突。在清新县某镇某村新当选的村委会主任就不是党员，但是他已经被动员加入共产党，而他本人也表示愿意加入共产党。但是若当选的村委会主任不是共产党员，也不愿意加入共产党时，则应该明确承认及尊重村委会主任的权力，而不应该加以任何干涉。这是法治的基本要求。因此，作者认为解决问题的根本办法是要确认村民委员会主任的职权是不受村支书的约束的。共产党应该明确要求村一级党组织自我约束，不干涉村民委员会行使其职权。

同样的道理也适用于乡镇以及区县一级党组织与政府组织之间的关系问题。只不过在乡镇和区县这两级由于是涉及到共产党的组织和宪政架构内的政府机构之间的关系问题，若处理的不好，有可能直接影响到共产党的执政地位问题。事实上，共产党是通过加强对人大的控制而希望借助于人民代表大会制度来达到对其他政府机构进行领导的目的。这在理论上是无可厚非的，因为在任何议会制国家，执政党都是控制着议会的。问题是共产党如何去控制议会。作者的观点是共产党应该通过宪法和法律所允许的渠道去控制人大，其具体运作应该是通过共产党在人大中的代表去控制人大，而非其他的制度外的方式对人大加以控制。

6.1.2 党组织在选举中的作用

从前面对三类选举制度的讨论中不难看出，共产党的组织事实上是控制着所有这三类选举制度的，包括从候选人条件的制定到整个选举过程的运作。这就决定了中国选举制度的改革及其未来是完全取决于共产党改革的决心和决定。但是共产党的决定并不可能完全脱离实际和普罗大众（即人民）的愿望。这是为什么共产党已经开始搞党内民主，因为它已经认识到在中国实现民主是必然的结果，只是时间迟早的问题。因此，作者对中国实现民主这一大方向的前景是持乐观态度的。

在目前的情况下，就党组织在选举中的作用而言，我认为应该从以下几个方面着手加以改革。其一是在规则的制定方面，共产党作为执政党，控制着各级人民代表大会，所以它可以在规则的制定方面发挥它的作用。具体来说，共产党能控制规则的制定，也就可以在一定的程度上控制民主发展的进程。但是长远而言，它却一定不可能阻止民主的发展。因此，共产党应该顺应民意，制定出一整套公平、公正，并且符合民主原则的选举规则。就现行的选举规则来看，村

民委员会的选举规则应该说是可以接受的，但是人大和各级政府机构领导人的选举规则还是有很大改进空间。其二是在选举制度运作的各个环节上面，党的组织事实上对选举委员会和主席团是具有控制性的，这也就保证了党对正式候选人提名的控制。由于选举制度是国家宪政体制的一部分，一旦选举规则确定以后，作为宪政制度一部分的选举制度的运作，就不应该由共产党所控制，而应该由独立于共产党之外的组织去操作，以确保选举制度运作的公平和公正。这也是世界各国的惯例，也是保证选举制度能真正合法运作的关键之一。当共产党决定放手对选举制度运作的控制之时，中国离真正实现民主选举之日也就为期不远了。因此，党组织应该主动和选举组织者保持适当的距离。第三，共产党应该在提出最优秀的候选人方面做足功夫，并发挥党组织的优势来帮助其所推荐的候选人竞选，而不是通过打压和排挤其他参选者，来达到共产党所推荐的候选人当选的目的。

6.2 村民委员会选举、政府机构领导人的选举和人大选举之间的关系

有许多研究村民委员会选举的学者认为村民委员会的直接选举会推动中国的民主进程，包括乡镇长的直选。¹⁹¹作者觉得有必要对村民委员会选举、乡镇长选举、以及乡镇人大选举之间的互动关系加以研究，这将会有助于分析和探讨中国选举制度的未来。

就村民委员会选举和政府机构领导人选举（包括乡镇长选举）之间的关系而言，村民委员会选举的经验无疑会提高选民的选举经验，也会有助于选民选举意识的提高。从这方面讲，村民委员会选举的经验是对政府机构领导人选举会有一些借鉴作用，特别是对基层政府机构领导人的选举会有一些帮助。不过，对于村民委员会选举制度对后者的启示和影响，本文作者并没有一些其他学者那么乐观。首先，在本质上村民委员会和政府机构，例如乡镇政府，是完全不同的，它们的性质、职能和资源也都不同，因此它们并不具有很强的可比性。其次，虽然共产党对搞村民委员会民主选举的决心是坚定不移，但是对民主选举政府机构领导人，例如乡镇长，则并不是如此坚定，因为这有可能会影响到党的领导这一基本原则以及党的执政地位。再次，采用直接民主的方式选举政府机构的领导人有可能会影响到人民代表大会制度的本质特征。因为宪法和法律都规定政府机构领导人是由同级人大选举产生，而不应该由选民直选产生。从宪政的角度来看，这直接关系到中国是走「议会制」之路还是走「总统制」之路。在目前的情况下，作者没有看到有任何迹象显示中国会向「总统制」过渡。若此判断是正确的话，那么任何扩大民主直选政府领导的行为只会增加和中国宪法所设定的根本制度，即议会制，的冲突，因而会不利于议会制在中国的真正实施。最后，而且最重要的是，政府机构领导人的选举制度还有可能涉及到党管干部原则。因此，作者认为村民委员会选举制度对政府机构领导人选举制度的影响会非常有限，两种选举制度之间不会有太多的互动关系。

就村民委员会选举与基层人大选举制度之间的关系而言，虽然村民委员会和基层人大组织在性质上完全不同，但是由于这两种选举制度之间有一最大的共性，那就是都是由选民直选，因此，作者认为村民委员会直选的经验无疑对推动乡镇和县市两级人大的直选会有直接帮助和借鉴作用。从本文第三部分的讨论我们知道共产党还没有对人大选举制度改革的方向有任何明确的表示，而且还介入和影响人大代表的选举。这一政策取向和共产党对村民委员会直选的坚定支持是有很大的区别的，并有可能影响到基层人大直选的民主性。不过，由于基层人大的直选并不会对共产党的执政地位有任何根本性的影响，作者对乡镇人大真正落实民主直选还是有一定的信心的。但是区县级人大真正落实民主直选就会比较复杂一点，这主要是因为县人大常

¹⁹¹ 参见：李凡，注10，第198—222页。

委会主任和委员的人选按照党管干部的原则是由党组织所决定，而这些人成功当选常委会主任和委员的前提条件是他们得当选为人大代表。为了确保这些人选能够顺利当选，党组织可能会运用其影响力。所以，作者认为村民委员会选举制度和基层人大选举制度，特别是乡镇人大选举制度，之间有一定的互动关系，会相互影响。

至于基层人大选举制度和基层政府机构领导人选举制度之间的关系，由于基层政府机构领导人是由人大选举制度所选出来的人大代表所选举产生的，因此应该说这两种选举制度之间的关系非常密切。在一定程度上基层人大选举制度的民主性会影响基层政府机构领导人选举制度的民主性，但是并不完全如此。这主要是因为县级以上政府机构领导人的选拔是由共产党的组织所决定的。

6.3 中国选举制度的未来

首先，作者想探讨民主直选在中国的未来。在理论上，中国有条件搞直选吗？宪法学者许崇德教授认为中国不宜普遍实行直接选举，其理据是在中国目前的社会情况下还有很多人民缺乏选举经验，而且文盲尚多，这些实际条件决定了如果勉强规定形式上好象很完备而实际上行不通的选举方法（即直选），不但会增加选举的困难，而且也会在实际上限制许多人的权利。选举法的实质应该是着眼于实际民主而非形式上的民主。¹⁹²这是中国共产党在建国初期的观点，在目前的中国，仍然有一些学者是持此观点。这一观点虽然具有权威性，但是并非通说。有相当一部分中青年学者不认同此观点。

在《公民素质与选举改革调查》¹⁹³一文中，学者蔡定剑通过对全国二十个地区的实地采访调查的方式探讨中国能不能扩大直接选举，提高选举民主化程度。他得出的结论是肯定的，并认为那种「经济文化落后，中国人的素质太低，搞不了民主」的理论是错误的。许多中外学者对经济发展和民主进程之间的关系，以及人的素质和民主进程之间的关系做过深入的研究，都证明这两者之间没有必然的因果关系。¹⁹⁴而且作者在广东省的调研也证明经济发展和选举的民主性之间没有必然的联系，经济落后地区的选举反而是更民主。但是中国是否有条件搞直选不仅取决于人民，而更取决于共产党是否已经愿意和具备条件搞直选。从前文对人大和政府机构选举制度的讨论可见，共产党还没有准备好搞直选。因此在这种情况下谈论扩大直选的层面或者搞全面直选是不切实际的。

在实践中，村民委员会民主直选已经由法律明文规定。乡镇和区县两级人大直选也已经由《选举法》加以规定。问题是，是否应该把乡镇人大的直选扩大到市、省、乃至全国人大呢？作者的观点是，在目前的情况之下，不应该扩大。这主要是因为基层人大代表选举目前还存在许多问题，最关键的是选举并非真正反映了选民的选择，而且选举组织者对选举的干预和影响非常之大。可以说，目前乡镇和县这两级直接选举基本上还是由党的组织部门控制之下的确认式选举，还根本不是真正的民主选举。在这种情况下，扩大直选的范围只会增强人们对选举制度的漠视，而完全不可能达到促进民主的目的。只有当目前的乡镇和区县这两级的直选是真正民主意义上的直选时，是有利于民主制度的发展时，才应该扩大直选的范围。因此选举制度的改革应该先从基层人大选举着手，而不必急于向上级人大扩展。

¹⁹² 参见：许崇德，《中华人民共和国宪法史》，福建人民出版社，2003年4月版，第245页。

¹⁹³ 原载《战略与管理》2003年第2期；又见：蔡定剑，《中国人素质太低，搞不了选举质疑？—经济、文化、政治、利益与选举行为相关性调查与分析》，载于蔡定剑，注40，第199—261页。

¹⁹⁴ 参见：David Zweig, *Democratic Values, Political Structures, and Alternative Politics in Greater China*, United States Institute of Peace.

那么民主直选政府机构领导人的可行性又有多大呢？从前面第四部分的讨论我们知道，乡镇一级政府已经有许多直选乡镇长的试点。乡镇长直选所反映出来的问题是，直选有违现行法律规定，因此有学者认为此类选举是违法的，甚至是违宪的。但是也有学者认为各地在乡镇方面所作的尝试有其可取之处的。例如，著名政治学学者、人民大学教授毛寿龙认为应该给予地方选举有足够的空间进行改革试验，而不应该过分拘泥于其违宪性。在中国这个「良性违宪论」有着广大市场、而且过往国情往往是先试验、若成功了然后再修改法律的国度，目前的情况是有些地方党组织显然是在做出各式各样大胆的尝试，而中央只是在极少数情况下，往往是在触动了中央的底线或者是敏感领域时，才会叫停某些改革。因此，作者认为中央事实上是在默许基层人大的改革试验，并希望能产生一种既符合中国国情，又是符合民主进程的切实可行的改革方案出来。

但是就法律问题而言，乡镇直选的违宪性只是问题的一个方面。更重要的另一个法律问题是，一旦人们接受了直选乡镇政府领导的途径，也就「间接」否定了人大选举同级政府机构领导人的职权。因为当选民直选了乡镇政府领导人之后，人大只能行使其批准「民选」结果的权利，否则就会和民主选举相冲突。但是若人大只是简单地批准「直选」结果的话，人大将变成橡皮图章。这就意味着「直选」乡镇政府领导人的做法是对人大制度的一个重要内容和职责，即选举并产生同级人民政府，的否定。

解决这一难题有两个方案。其一是在基层取消人大，因为基层人大的作用其实并不大。在许多地方，基层人大是没有什么作用的。¹⁹⁵作者在广东的调研也发现清新县某镇人大一年才开一次会议。既然如此，还不如干脆取消基层人大组织。这样做的好处是，既可以通过取消一个没有实际作用的组织而达到简化基层政府组织的目的，也可以完全避免一个宪制上的权力机关（基层人大）与人民民主直选所产生的乡镇人民政府领导人之间潜在的冲突。其二是由乡镇人大直接组建乡镇一级政府或者由乡镇人大取代现行的乡镇政府的职权，从而取消乡镇一级政府领导人的直选。

究竟哪一种方案更可取呢？这就得从中国宪政体制和现实两个角度来考察。从宪政的角度来看，中国实行的是人民代表大会制度。中国宪法学者的通说是，中国的宪政体制在本质上是议会制，而议会制最基本的特征之一就是由议会产生政府。若遵循此原则的话，就不应该由人民直选乡镇人民政府的领导人。因此，第二种选择更符合中国宪政体制的要求。

从现实的角度来看，基层人大从来就没有真正行使过其宪制上的权利。之所以这样说，是因为在中华人民共和国成立以来，乡镇一级政府的领导人基本上都是由同一级党组织确定候选人，然后由人大加以确认。虽然近几年有一些地方对乡镇一级人民政府领导人的选举进行了改革，但是中国大部分地方的乡镇一级人民政府领导人仍然是沿用原来的方法选举产生的。就在经济相对发达的广东省，作者的调研也证明广东仍然是沿用原来的选举模式。一些改革的先锋乡镇也又回复了原来的选举模式。之所以如此，作者认为可能有其宪制上的考虑。因为乡镇一级已经是属于真正的政权架构中的一级，中央肯定会考虑这一级选举改革会波及更上一级，乃至中央人民政府的可能性，故会倍加小心地处理乡镇这一级人民政府领导人的选举改革。因此从现实的角度出发，作者也认为第二种选择更可取。

另外，采用第二种选择也并不一定是否定人民直选的权利。人民直选的权利是通过选举人大代表来实现的，而不是通过直选乡镇人民政府领导人来实现的。这是中国的宪政体制所决定的。

¹⁹⁵ 参见：田必耀，2004，《中国人大红皮书》中「乡镇人大」一节，原载于《人大工作》，2005年第1期，下载于：<http://www.lpci.cn/ShowArticle.asp?ArticleID=2409>。

之所以目前人民不重视人大及其选举主要是因为各级人大并没有真正行使其宪制上的职责，而不是议会制本身的缺陷。

接下来的问题就是中国选举制度的未来，从前面第二部分的讨论可以看出，作者对村民委员会选举制度的前景是充满信心的。但是其他两种选举制度的未来又如何呢？

蔡定剑在分析了中国选举制度的历史和现状后，作出如下评论：

「社会主义民主有历史性进步，人们要求进一步发展民主仍存在很大的期望。但是，人们对发展民主有不同的认识，民主选举的发展与传统的『党管干部』的做法出现了不协调。民主选举的发展处于相持状态。一方面要求依法律程序和民主程序办事，保证选举实现民意，要求民主选举和依法办事的法律意识越来越强；另一方面要求按组织的意图进行选举，保证领导和组织意图的实现，有组织控制选举结果的做法也越来越强，使选举工作越来越难，选举的实践发展远不能满足人民群众的期望。」¹⁹⁶

这说出了决定着中国选举制度未来的关键，那就是共产党对选举制度的影响。中国过去三十多年的经济改革是由共产党于一九七八年正式启动的，并已经取得了有目共睹的成绩。农村村民委员会选举制度的改革也是在共产党的推动和支持之下，通过二十多年的实践，正在朝着健康的方向发展。因此，作者认为中国人大选举制度和政府机构领导人选举制度的未来也主要取决于中国共产党的决心。人大是中国的权力机关，共产党一定会认真和谨慎地对待人大选举制度的改革，而各级政府机构则是实际上的掌权者，因此共产党也会小心对待其选举制度的改革。党管干部原则不仅适用于所有县级以上政府机构的干部，也适用于县级以上人大常委会成员的选拔和任用。因此，作者认为这两种选举制度的改革在中国会同步进行，其进程将主要取决于共产党改革这两种选举制度的欲望和决心。共产党的十六届四中全会所强调的加强党的领导有可能被解释为也要加强党对选举过程的领导。目前的党管干部原则也确实是强调对选举结果的控制。但是另一方面，十六届四中全会在强调党的领导的同时，也强调民主制度的建设，并把民主制度建设当作是关系到党的存亡的大事。作者对《决定》的解读是共产党已经意识到要对现行制度，包括选举制度，进行改革。作者也同意其他一些学者提出的中国政治制度改革时机已经成熟的观点。问题是怎么改？就人大和政府机构领导人选举制度的改革而言，只要对《工作条例》中党管干部原则的适用范围加以适当的修改，把其适用范围限定于共产党所提名的干部候选人，而不是所有的干部，那么党管干部原则也就不会阻碍民主选举的发展。更重要的是共产党应该认识到对党管干部原则作出这样的修改并不一定会对党的执政地位和能力产生负面的影响，甚至还有可能提高共产党在人民群众中的威信，反而有助于加强党的执政地位和能力。因此，作者对人大和政府机构领导人选举制度的未来持审慎乐观的态度。至于党内选举制度的改革以及中国整个民主政治制度的发展，有外国传媒认为二零零五年十月十九日中国政府所发表的《中国的民主政治建设》的白皮书显示中国政治改革是在倒退。¹⁹⁷从本文前面的分析可以看出，白皮书对基层自治组织的民主选举做出了肯定，对人大代表选举制度和政府机构领导人选举没有提出任何政策指引。白皮书有三章涉及到中国共产党，一方面是强调要坚持中国共产党的领导，另一方面则非常明确地提出要发展党内民主，并指出要通过党内民主来发展人民民主。本文作者认为，当共产党真正能完全实现党内民主时，民主的内涵就决定了共产党必然会发展人民民主。因此，作者对白皮书的解读是，白皮书在许多方面只是重述了宪法和有关

¹⁹⁶ 参见：蔡定剑，注 41，第 30—31 页。

¹⁹⁷ 参见：Jonathan Watts, Chinese Communists dash hopes of democratic reform, Friday October 21, 2005, *The Guardian*, at <http://www.guardian.co.uk/china/story/0,7369,1597425.00.html>。

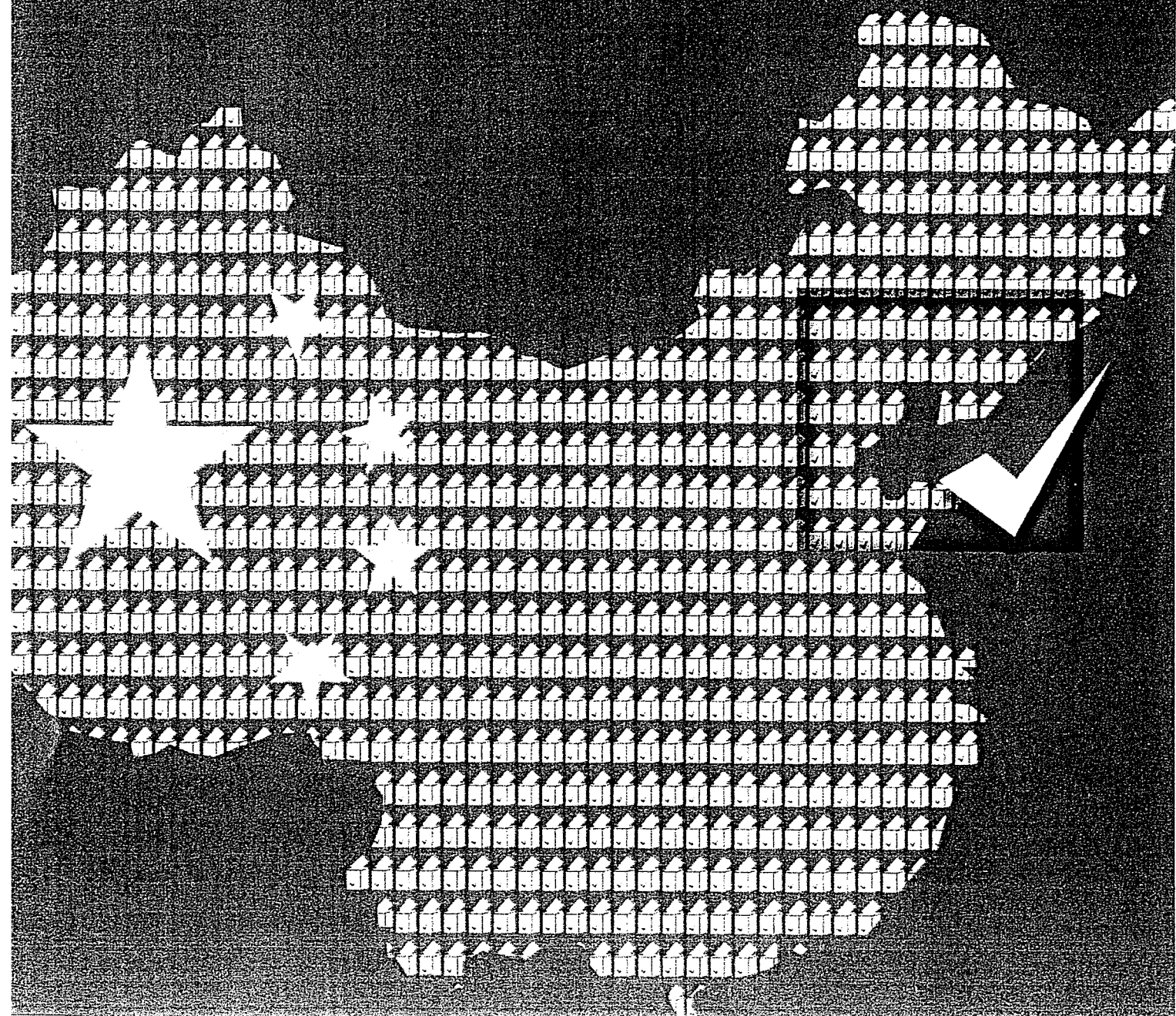
法律的规定以及党的一贯政策，而没有提出新的政策，包括对三种选举制度的改革并没有提出任何政策指引。但是白皮书对党内改革则首次对十多年来的党内改革试点做出了完整的总结并指出了发展的方向。这说明了共产党的政策决定是先搞党内选举改革，并希望党内选举改革会自然带动人民民主的发展，包括三种选举制度的改革和发展。白皮书凸现出了中国的政治改革侧重点将在于党内民主改革，而各级人大及政府领导的选举制度将维持原状。

Election Reform in China: Its Context, Recent Developments, and Future

LIN Feng



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PREFACE

Civic Exchange is pleased to have worked with Lin Feng to examine China's electoral experience. This is our think tank's first project to consider national policy issues that are of interest not only nationally but also internationally. There is wide agreement that China needs to continue to evolve its electoral arrangements for to improve governance, as well as increase the level of democratic participations of ordinary citizens. China's elections now have a sufficient long experience for scholars to draw insights from and to consider future trends, as well as make recommendations to the authorities. We expect to continue conducting mainland policy studies and engaging in dialogue across the border which is a part of nation development.

We hope this effort will also be informative to Hong Kong people, who are going through their own trials and tribulations over electoral reforms here. The more the people here know about the national experience, the better they may be able to think through challenges in charting their own course in constitutional development.

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1. Introduction

The 4th Plenum of the 16th National Assembly of the Communist Party of China (CPC) adopted in 2004 the Decision of the Central Committee of the CPC on Strengthening the CPC's Governance Capacity ("the Decision"). The Decision points out that strengthening the CPC's governance capacity is an important strategic issue relating to the future of the People's Republic of China ("the PRC"), the survival of the CPC, and the long-term administration and stability of the State¹. The Decision has summarised six essential lessons from the fifty five years of governance by the CPC, of which one is the insistence on scientific, democratic and lawful governance and continuing improvement of the CPC's leadership and governance style². This is held to be an important guiding principle to be followed and an objective to be achieved in the CPC's governance. The Decision also ranks the ability to develop socialist democratic politics as one of the five main tasks for the CPC, and notes that the fundamental requirement of democratic politics is the combined insistence on the CPC's leadership, democracy, and rule of law³. The development of socialist democratic politics depends essentially on the establishment of a democratic system through the introduction and operation of various proper mechanisms, norms and procedures.⁴ Rule of law is regarded as the fundamental principle and objective of democratic politics while the reform and improvement of the CPC's leadership will, as the Decision states, contribute to the development of democracy and rule of law in China⁵. On 19 October 2005, the Chinese Government issued for the first time a white paper entitled "Building of Political Democracy in China" (White Paper). These documents demonstrate the attention paid by the CPC to the development of a democratic political system. Before the opening of the 4th Plenum of the 16th National Assembly of the CPC, Hu An-gang, together with two other scholars, had already expressed the view that it was time for China to move from concentrating on economic development to concentrating on the development of various democratic systems. In their view, China had its first transformation from the old system of planned economy to a market economy in 1978 and was now ready for the second transformation from economic development to the development of various democratic systems⁶. Professor Zhou Tian-yong also opines that China's political system has come to the stage that it has to be reformed. The only issues are what to be reformed, how to reform it, and to what extent it should be reformed?⁷ It is therefore clear that both the CPC and some Chinese scholars have realised not only that it is necessary for China to reform its political system so as to establish a democratic political system, but that this is an appropriate time to do so.

¹ See "the Decision of the Central Committee of the Chinese Communist Party on Strengthening the Governing Capacity of the Chinese Communist Party" (Zhonggong Zhongyang Guanyu Jiaqiang Dang de Zhizheng Nengli Jianshe de Jueding) ("the Decision"), at: <http://www.china.org.cn/chinese/2004/Sep/668376.htm>; see also Zeng Qing-hong, "Jiaqiang Dang De Zhizheng Nengli Jianshe de Ganglingxing Wenxian" (Document on Strengthening the Governing Capacity of the CPC), People's Daily, 8 October 2004; quoted from Yu Yun-yao and Li Jun-ru (eds.), "Jiaqiang Dang de Zhizheng Nengli Jianshe Zhuanti Jianggao" (Speeches on the Theme of Strengthening the Governing Capacity of the CPC), 1st ed., Zhongyang Dangxiao Press, Beijing, 2004. Zeng Qing-hong is currently a member of the Standing Committee of the Central Committee of the CPC, and the Secretary in charge of the Secretariat of the Central Committee of the CPC, President of the School of the Central Committee of the CPC, and Vice-President of the PRC.

² *Ibid.*

³ See the Decision; see also Zeng Qing-hong, n. 1, p. 12.

⁴ See the Decision; see also Zeng Qing-hong, n. 1, p. 11.

⁵ See the Decision; see also Zeng Qing-hong, n. 1, p. 12.

⁶ See Hu An-gang, Wang Shao-guang and Zhou Jian-ming (eds.), "Di Er Ci Zhuanxing Guojia Zhidu Jianshe" (The Second Transformation: the Establishment of National Systems), Qinghua University Press, Beijing, 2003.

⁷ See Zhou Tian-yong, "Quanmian Jianshe Xiaokang Shehui Yanjiu Baogao Ji: Zhongguo Zhengzhi Tizhi Gaige" (Collection of Research Reports on Comprehensive Establishment of a Modestly Rich Society: China's Political System Reform), Zhongguo Shuili Shuidian Press, Beijing, 2004, p. 1.

Against this macro political background, this paper will study the electoral system, one of the essential elements of a democratic political system. China's electoral system is composed of three elements: (i) the electoral system of grassroots autonomous organisations such as village residents' committees; (ii) the electoral system of the people's congresses at all levels; and (iii) the electoral system of officials of governmental organs at all levels. Many Chinese and foreign scholars have conducted extensive and in-depth research on the electoral systems of village residents' committees and township heads. Some scholars are of the view that China's reform of its village electoral system represents the future of its political system reform, and the experimental reform of township head election will be the breakthrough point for China's political reform⁸. But an alternative view is that some experimental reform of township head election is unconstitutional and therefore impossible to be promoted in China⁹. What is then the future of China's electoral system? This paper intends to examine and analyse in detail the current status of China's electoral system reform and to predict on that basis the direction of its future development through discussion and analysis of the three kinds of electoral systems mentioned above. The paper will use the same research methodology to study the relevant legal norms, the CPC's political considerations, and the latest electoral practice. Part two of this paper will first discuss the electoral system of rural grassroots autonomous organisations, i.e. village residents' committees. Given that the election of village residents' committees has already had a history of twenty-odd years, and also that there are many research monographs and papers on the election of village residents' committees, this paper will focus on the most recent developments in the election of village residents' committees and express a view on the future of rural electoral system. Part three of this paper will discuss the electoral system of people's congresses. According to the 1979 Election Law of the PRC on the National People's Congress (NPC) and All Local People's Congresses ("the Election Law"), the deputies to township and county people's congresses will be directly elected by voters while deputies to the people's congresses above county level will be indirectly elected by the deputies to the people's congress at the next level below. The author's view is that if elections at township and county levels are successful, then direct election can be further expanded gradually up to the NPC. Otherwise, it will be meaningless to expand direct election. What should be done instead is to find and correct the problems with elections at township and county levels before considering expansion of direct election. Hence, the section on election practice in Part three of the paper will focus on elections at township and county levels. Part four will examine the electoral system of officials of governmental organs at various levels. As experimental reforms have been undertaken in the election of township and county heads in the PRC, and indeed the reform of township head elections has already had a history of seven years, we are able to analyse several different models which have already appeared for elections at the lowest two levels.

Of the three kinds of electoral systems, that of grassroots autonomous organisations is different in nature from the other two, which are about election of members and heads of governmental organs and may affect the governing status of the CPC. As far as the electoral system of village residents' committees is concerned, both legislation and the policy of the CPC expressly support their direct election. The author believes that the future of village elections is bright even though there is still a long way to go before China can truly implement democratic election of village residents' committees. Some scholars researching the electoral system of village residents' committees hold the view that direct election at this level will promote democratic development in China, including direct election of township heads¹⁰. But

⁸ See Li Fan, "Zhongguo Xuanju Zhidu Gaige" (Reform of China's Electoral System), Shanghai Jiaotong University Press, 2005, p. 3.

⁹ See Zha Qing-jiu, "Minzhu Buneng Chaoyue Falu" (Democracy Should not Exceed the Limit of Law), Legal Daily, 19 January 1999.

¹⁰ For example, see Li Fan, "Chengfeng Erlai – Wo Suo Jingli de Buyunxiang Xiangzhang Zhixuan" (The Direct Election of Township Head at Buyun Town which I Experienced), Northwest University Press, 2003, pp. 198-222.

the author is of the view that direct election of village residents' committees will not have a direct impact on the reform of the other two electoral systems. This is because from a legal perspective, a village residents' committee, as an autonomous organisation, is not part of government whereas the people's congresses and governmental organs at various levels are formal components within China's constitutional structure. They are therefore different in nature. Furthermore, statutory provisions regulating the election of village residents' committees are fundamentally different from those regulating the election of deputies to the people's congresses and officials to governmental organs at various levels. Another more important factor is that the CPC is quite determined to reform the election of village residents' committees but its attitude is still uncertain towards the reform of the other two electoral systems. As far as the electoral system of the people's congresses is concerned, one view is that China is ready to further expand direct election, from county level to municipal and provincial levels¹¹. But elections at the lowest two levels still have many problems. Though competition has appeared in the election of deputies to local people's congresses in some places, as far as the whole country is concerned, election of deputies to local people's congresses in most parts of China still has the characteristics of traditional confirmative election rather than true democratic election. Hence, the paper argues that at present the conditions in China are not ready for expansion of direct election and it would be meaningless to do so. As far as election of officials to local governmental organs is concerned, the experimental reform which has already started with various local governments with regard to direct election of township and county heads demonstrates its feasibility. However, such experimental reform is in direct conflict with the people's congress system because in law township and county heads can only be elected by the corresponding people's congresses indirectly. The author is of the view that a more feasible approach is to let a local people's congress organise or establish the people's government at the same level by following practice in a parliamentary system and remove the necessity for the people's congress to elect officials to the people's government at the same level through formal nomination and voting process. The advantage in doing so is that such an approach is not only consistent with the people's congress system but also can make the people's congress system, which is in essence a parliamentary system, really operate at local levels in China.

After analysis of the three existing electoral systems in China, it is not difficult to see that CPC organs at various levels influence either directly or indirectly the operation and the results of the three electoral systems. Hence, Part five of this paper will discuss briefly election reform within the CPC. The last part of this paper will further study the relationship between the CPC and elections in China, the relationship among the three existing electoral systems, and the future of the three electoral systems. The author takes the view that with the promotion of the CPC and the support of legislation the electoral system of village residents' committees is developing in a healthy direction. The reform of the electoral systems concerning local people's congresses and officials to local people's governments has however an uncertain future due to the lack of support of the CPC and the application of the principle of administration of officials (cadres) by the CPC. Their future mainly depends on the CPC's determination to reform them. Given that the 4th Plenum of the 16th National Assembly of the CPC has already put on the agenda the establishment of various democratic systems, and has made it clear that the current political system needs to be reformed, though without specific reform proposals, the author remains cautiously optimistic about the future of China's electoral system reform.

¹¹ See Jiao Hong-chang and Wang Yi-bai, "Gongmin dui Xuanju Gaige Qidai de Diaocha Fenxi" (Investigation and Analysis of the Expectation of Citizens towards Election Reform", in Cai Ding-jian (ed.), "Zhongguo Xuanju Zhuangkuang de Baogao" (Report on Election Circumstances in China), Law Press, Beijing, 2002, pp. 270-280.

2. Electoral System of Village Residents' Committees

The 1982 Constitution has defined both urban residents' committees and rural village residents' committees as mass autonomous organisations¹². Since both kinds of committees are of the same legal nature and village residents' committees have a longer history of direct election, this paper will only discuss the electoral system of village residents' committees.

2.1 Statutory Provisions for the Election of Village Residents' Committees

Though the 1982 Constitution has provided that a village residents' committee will be elected by village residents, it does not specify whether or not the election should be direct or indirect. Hence in fact, from the promulgation of the 1982 Constitution to the adoption of the Organic Law of the PRC on Village Residents' Committees (Trial) in 1987 ("1987 Organic Law"), China did not have any specific legislation governing the election of village residents' committees. The enactment of the 1987 Organic Law set out for the first time statutory rules governing election of village residents' committees. Some local governments have also issued corresponding local legislation¹³. From the perspective of legal norms, the 1987 Organic Law already had provisions on the nature, the legal status, rights and obligations of a village residents' committee, and defined the relationship between a village residents' committee and a township government one in which the township government should only provide guidance and coordination rather than one between a leader and the one to be led¹⁴.

In 1998, targeting the problems revealed in actual operation, the Standing Committee of the NPC (NPCSC) made some fundamental amendments to the 1987 Organic Law, and adopted the Organic Law of the PRC on Village Residents' Committee ("the 1998 Organic Law"), which contains the following main amendments. Firstly, there is formal recognition of "hai xuan" (mass nomination and mass election)¹⁵ through the statutory provision that "the head, deputy head as well as members of village residents' committee will be directly elected by village residents. No organisation or individual shall designate, appoint or replace any member of a village residents' committee"¹⁶. Secondly, the status of a village CPC organisation is clarified through the stipulation that "the CPC's grassroots organisation in rural areas, should operate according to the charter of the CPC, exercise its role of leadership, support and guarantee, according to the Constitution and Laws, that village residents organise autonomous activities and exercise directly their democratic rights". Thirdly, the relationship between a village residents' committee and a township government is further clarified by the requirement that a township government "should not interfere unlawfully with the matters within the autonomous scope of a village residents' committee".

¹² See Art. 111(1) of the 1982 Constitution, at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=334617&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=WZXZLK&pdmc=010602>.

¹³ For example, the 16th Meeting of the 7th Standing Committee of Heilongjiang Provincial People's Congress adopted on 24 August 1990 "Heilongjiang Shishi Zhonghua Renmin Gongheguo Cunmin Weiyuanhui Zuzhifa (shixing) Banfa" (Methods of Heilongjiang Province on Implementing the Organic Law of the PRC on Village Residents' Committees (Trial)).

¹⁴ See the 1987 Organic Law of the PRC on Village Residents' Committees (Trial), at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4491&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=WXLK&pdmc=010602>.

¹⁵ In 1993, Lishu County in Jilin Province created a new means of election in which the right to nominate candidates for a village residents' committee was completely given to the villagers. Voters could nominate candidates at will. Governmental organs at the next level above would not set any conditions or restrictions on the candidates. As a result, all 336 village residents' committees were elected through this new method, known as "haixuan".

¹⁶ See Art. 11(1) of the 1998 Organic Law of the PRC on Village Residents' Committees, at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4716&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=WXLK&pdmc=010602>.

Fourthly, it is clearly provided that "in electing the village residents' committee, candidates shall be nominated by residents of the village, and the number of candidates must be more than the number of members to be elected"¹⁷. Fifthly, in order to make the election fair and democratic, various amendments have been made to the election procedure, including early publication of the list of village residents with the right to vote and to stand for election, the organisation of elections by an election committee of the village residents' committee, the requirement that members of an election committee must be elected by either a residents' meeting or each residents' group¹⁸, and direct nomination rights of village residents. Sixthly, there are more detailed provisions for democratic decision and supervision. For example, the matters which must be discussed by residents' meetings are set out and it is required that all village matters must be made public.

In addition to national legislation, 31 provinces, municipalities directly under the State Council, and autonomous regions have enacted local legislation to implement the 1998 Organic Law, regulating election of village residents' committees in their respective jurisdictions. Most of them have also enacted relevant methods on the election of village residents' committees¹⁹.

From the perspective of legal norms, the promulgation of the 1998 Organic Law and the enactment of local legislation for its better implementation have further improved the electoral system of village residents' committees, and provided a channel for village residents to participate in and elect democratically and competitively the head and members of a village residents' committee. The enactment of statutory norms has also removed from the electoral system the possibility for a village CPC organisation or township government to interfere with the election of a village residents' committee. The addition of a series of procedural requirements has also reduced the possibility of the occurrence of undemocratic phenomena. Hence, at the level of legal norms, the 1998 Organic Law has brought forward some clear messages, i.e. it intends to improve the electoral system so as to ensure that village residents can directly exercise their democratic rights, residents can really govern themselves autonomously, and that the village CPC organisation and township government will not interfere with village's autonomy.

2.2 Policy Analysis

From the perspective of the CPC's policy, since the beginning of economic reform in 1978, the CPC and the Central Government (the State Council) have adopted the policy of giving village residents autonomy in running village affairs and promoted rural grassroots democracy. In June 1981, in the process of summarising historical experiences and lessons, the CPC explicitly put forward the policy that "it should gradually establish people's direct democracy in grassroots governmental organs and grassroots society" in its Resolution on Several Historic Questions of the CPC since the Founding of the PRC²⁰. After the promulgation of the 1987 Organic Law, several different ministries and commissions of the Central Government jointly held a series of meetings between 1990 and 1994 to discuss and summarise experience of implementation for further improvement and development of self-governance by village residents. The lessons have been summarised as "four democratic processes", including democratic election, democratic decision-making, democratic

¹⁷ See Art. 14 of the 1998 Organic Law of the PRC on Village Residents' Committees.

¹⁸ See Art. 13 of the 1998 Organic Law of the PRC on Village Residents' Committees.

¹⁹ See : <http://www.chinavillage.org/dffg.htm> .

²⁰ See the website of the Ministry of Civil Affairs, "Nongcun Jiceng Minzhu Zhengzhi Jianshe Fazhan de Zhuyao Jincheng" (The Main Progress of the Development of Democratic Politics in Countryside), downloaded from: http://www.mca.gov.cn/artical/content/WCM_YWJS/20031224145024.htm.

administration, and democratic supervision, and incorporated for the first time into the report of the CPC at its 15th National Assembly held in October 1997.²¹ The 3rd Plenum of the 15th National Assembly held in October 1998 spoke highly of self-governance by village residents, and made it clear that the expansion of rural grassroots democracy and the implementation of self-governance by village residents are great creations of the CPC, leading hundreds of millions of peasants to develop socialist democratic politics with Chinese characteristics²². On 14th July 2002, the General Office of the Central Committee of the CPC, together with the General Office of the State Council, jointly issued the Notice on Further Improving the Election for the Change of Term of Village Residents' Committees, the first normative document issued by the Central Committee of the CPC since it decided to promote self-governance by village residents²³. Its promulgation demonstrates that the CPC pays close attention to, accepts and supports democratic election of village residents' committees, and requires its local organisations to strengthen their leadership over and cooperation with local people's congresses and governments in the organisation of elections of village residents' committees. Hence, the development of the electoral system of village residents' committees has already had the support of the CPC at policy level, and has gradually moved ahead under the leadership of the CPC. The Decision adopted by the 4th Plenum of the 16th National Assembly of the CPC also points out the necessity to expand grassroots democracy for mass autonomous organisations (such as village residents' committees), and to ensure that people at grassroots level can exercise their democratic rights according to law²⁴. Chapter Six of the White Paper discusses specifically grassroots democracy in China. It has pointed out that grassroots democracy in the countryside is an important issue in the development of political democracy in China, and confirmed that village residents' autonomy through direct election of village residents' committees is a means suitable to the specific circumstances in rural China for the development of political democracy²⁵.

Why has the CPC been so determined to carry out democratic elections in rural areas? There could be several reasons. The first reason is that in nature a village residents' committee is a self-governance organisation and its election has nothing to do with state power, and therefore won't affect the governing status of the CPC. The second is that there are nine hundred million peasants in China, and proper handling of rural issues directly contributes to the stability of the society. The CPC is of the view that "the four democratic processes" may be effective measures to solve long-existing problems in rural areas. The third is that a village residents' committee does not control any governmental resources. If democratic election in rural areas fail, the CPC has nothing to lose. But if it succeeds, the CPC has won a lot by resolving many long-term problems in rural areas and achieving stability in rural areas.

2.3 Analysis of Election Practice

It can be seen from above analysis that the electoral system of village residents' committees has not only the full support of the CPC at policy level, but also sufficient protection from a legal perspective. What of the actual elections of village residents' committees? Since many

²¹ See Part six of the Working Report of the 15th National Assembly of the CPC: "Gaoju Dengxiaoping Lilun Weida Qizhi, Ba Jianshe you Zhongguo Tese Shehuizhuyi Shiye Quanmian Tuixiang ershiyi shiji" (Holding on to Dengxiaoping Theory and Pushing Forward Comprehensively the Establishment of Socialism with Chinese Characteristics into the 21st Century).

²² See n. 20.

²³ See the website of Ministry of Civil Affairs, "Cunji Minzhu Xuanju" (Democratic Election at Village Level), downloaded from: http://www.mca.gov.cn/artical/content/CMZZ_SY/2003122991609.htm.

²⁴ See Part five of the Decision.

²⁵ See para. 3 of Chapter six of the White Paper.

research monographs and papers have already studied election practice of village residents' committees before 2005²⁶, this paper will focus on the most recent election practice since the enactment of the 1998 Organic Law, i.e. the 2005 election practice. But before that, it is worthwhile to mention briefly two landmark events in the history of village residents' committee elections. Firstly, in 1980, two years before the enactment of the 1982 Constitution, election of a village residents' committee first appeared in China. Village residents initiated the election of residents' committees themselves in Guozuo Village, Pingnan Town, Yizhou City, as well as in some villages in Yishan and Luocheng Counties, Guangxi Autonomous Region. After their establishment, these village residents' committees started to handle village matters democratically, solved some common village problems, and achieved good results in village governance²⁷. The elections were held upon the initiation of village residents without any statutory support and were therefore pioneering.

Secondly, a new method was used by Lishu County in Jilin Province in 1993, in which the right to nominate candidates for a village residents' committee was given altogether to village residents who could nominate any candidates according to their own wishes. The township governments at the next level above did not set any guidelines or restrictions on candidates. This method is called "haixuan". The village residents' committees in all 336 villages in Lishu County were elected through this method²⁸. The importance of the adoption of this new method is that though the 1987 Organic Law was already in existence, the Law did not stipulate that the election should be direct. The actual practice at the time was that the CPC Committee at the next level above (township level) chose the candidates and the election would be held to confirm these candidates. "Haixuan" changed the election of a village residents' committee into direct election and in that sense is also pioneering.

According to the Ministry of Civil Affairs, 2005 is a year in which elections for a new term of village residents' committees need to be held in many provinces in China. By the end of June 2005, elections had already been held in nine provinces and elections were in progress in seven other provinces. Elections will be held in the second half of the year in five other provinces²⁹. In a conference recently organised by the Ministry of Civil Affairs to analyse the village election situation, attendees noted three characteristics of village elections in recent years. Firstly, village elections have become more democratic, formal, and systematic, and the ability of the CPC Committees and governmental organs at all levels to provide leadership and guidance to village elections has increased. Secondly, with the deepening of reforms in rural areas, village residents have become more enthusiastic in participating in elections and competition has therefore increased in village elections. Thirdly, many new methods have been created and used by various local governments within the limits of

²⁶ For example, see Xu Yong (ed.), "Xiangcun zhili yu Zhongguo Zhengzhi (Township and Village Administration and Chinese Politics), Chinese Social Science Press, 2003; Xu Xiu-li (ed.), "Zhongguo Nongcun Zhili de Lishi yu Xianzhuang: Yi Dingxian, Zouping he Jiangning Weili" (The History and Current Situation of Rural Administration in China: Examples of County Ding, Zouping County and Jiangning County), Social Science and Literature Press, 2004; He Zeng-ke, "Jiceng Minzhu yu Difang Zhili Chuangxin" (Grassroots Democracy and Innovation of Local Administration), Central Government Compilation and Translation Press, 2004; Tang Ming (ed.), "Cunweihui Xuanju Falu Wenti Yanjiu" (Study of Issues on the Election of Village Residents' Committees), China Social Science Press, 2004; The Carter Center Report on Chinese Elections: Observation of Village Elections in Fujian and the Conference to Revise the National Procedures on Villager Committee Elections, at: http://cartercenter.com/peaceprograms/540_cdoc.htm.

²⁷ See n. 20.

²⁸ Quoted from He Bao-gang and Lang You-xing, "Cunmin Xuanju zhong de Jingzheng: Dui Zhejiang Gean de Fenxi (Competition in Village Elections: Analysis of Cases in Zhejiang), Central-China Normal University Journal (Social Science version), Vol. 5, 2000.

²⁹ See the website of Ministry of Civil Affairs, "Minzhengbu zai Guangxi Guilin Zhaokai Quanguo Cunweihui Xuanju Qingkuang Fenxihui" (The Ministry of Civil Affairs Organised a National Conference to Analyse the Election of Village Residents' Committees in Guilin of Guangxi Province), downloaded from: <http://www.chinavillage.org/readnews.asp?newsid={25D2B725-D8F0-4AFC-AA61-3698F75B5319}>.

existing policy and legislation and have been regarded as of high reference value in practice³⁰. Hence, it is clear that the organisers of village elections hold a positive view of their development.

Also, "haixuan" has had a further development in a 2005 village election. On 27 March 2005, villagers in Tangjiali Village, Yuhang District, Hangzhou City, Zhejiang Province adopted the method of "haixuan zijian" (direct election upon self-recommendation) to elect its new village residents' committee. This is a new development to the method of direct election through nomination of candidates for a village residents' committee by villagers as stipulated in the 1998 Organic Law, and is believed to be a breakthrough in the electoral system. What is new is that all voters who have met the requirements for members of a village residents' committee, are interested in village administration, and are willing to serve villagers, can register themselves to be candidates to participate in the competition for membership of a village residents' committee. Furthermore, in the election process, voters can choose in their ballots those who have registered their candidacy or any other person. Since those who register themselves to be candidates are not regarded as formal candidates (according to the Organic Law), this new method is therefore regarded as a kind of direct election without formal candidates.

This new method is the latest interpretation of "haixuan" as stipulated in the 1998 Organic Law. It is not only in compliance with the 1998 Organic Law, but also moves a step further than "haitui zhixuan" (direct election with mass nomination). In the words of Mr Zhang Hongguo, Director of Grassroots Administration of the Civil Affairs Bureau of Hangzhou City, the new method has two advantages: "one is that it has removed the disadvantages associated with direct election with mass nomination, which has too many steps and often incurs high costs, and rectified the defect that "haixuan" has no candidates standing out for election, votes are diversified, and there is no procedure and order in seeking votes in the nomination process. The other is that through the means of self-registration, the channel for villagers to choose competent members for a village residents' committee and for outstanding and committed persons to make full use of their skills in village administration has been expanded"³¹. This new election method has also attracted the attention of the Development Research Centre of the State Council, and the Civil Affairs Departments of Yuhang City and Zhejiang Province. They all sent representatives to observe the whole election process. One researcher at the Development Research Centre of the State Council believes that the bold innovation of Hangzhou this time is a good example to be learned from, and that it has created a new era for village elections in China³².

But was the new trial at Yuhang initiated by village residents and reflective of the true intention of voters? According to an official from the Zhejiang Provincial Civil Affairs Bureau after the election in Yuhang, "Through examination and scrutiny of self-registered candidates by the CPC organisation, the new method can better combine the wishes of the CPC with that of the mass so that both the village residents and the CPC will have confidence in the elected members of the village residents' committee".³³ His comment shows that the CPC Committee had conducted examination and scrutiny of the candidates before election.

³⁰ Ibid.

³¹ See Dong Hua-ping, "Zhejiang zai Quanguo Shuaixian Caiyong Zijianhaixuan Fangshi Xuanju Cungan" (Zhejiang Leads the Country in Adopting Mass Election of Village Leaders on the Basis of Self-Recommendation), *Jinri Zaobao* (Today's Morning Post), 28 March 2005, downloaded on 15 June 2005 from <http://www.southcn.com/news/china/zgkx/200503280354.htm>.

³² See "Quanguo Shouge Zijianhaixuan Cungan Yuhang Xuanju Chansheng" (Yuhang Has the First Village Leader Elected through Mass Election on the Basis of Self-recommendation), downloaded on 15 June from <http://mzt.zjol.com.cn/05mzt/system/2005/04/12/006090025.shtml>.

³³ Ibid.

Strictly speaking, village elections are by nature social elections of a self-regulated body and should therefore fully represent the wishes of the voters in the village. The CPC Committee should not play any role in the organisation or the scrutiny of candidates as this would constitute a restriction on the election of the head and members of a village residents' committee. The wishes of the CPC should, in the author's view, only be reflected through its nomination of candidates.

The above discussion is about positive development in village elections. But is the election outlook nationwide so optimistic? With this question in mind, the author conducted field study in June 2005 in Guangdong Province where all village elections had finished in May 2005. Due to time constraints, the author chose two towns to visit, one poor town in one of the poorest counties (X town in Qingxin County, Qingyuan City, Guangdong Province), and a rich town in one of the richest cities (Y town in Dongguan City, Guangdong Province). The author interviewed the newly elected head and members of one village residents' committee, officials sent by Guangdong Provincial CPC Committee to assist the village elections, and local governmental officials who were either in charge of, or had sufficient knowledge of the village elections.

According to one official sent by the Guangdong Provincial CPC Committee to assist village elections, this year is the third round of village elections in Guangdong's history (village elections were held in Guangdong in 1999 and 2002). There exists a fundamental difference between this time and the previous two. In the previous two elections, the list of candidates for each village residents' committee was decided by the township CPC Committee. But the Guangdong Provincial CPC Committee made it clear in 2005 that the CPC Committees were not allowed to determine the lists of candidates and it was up to the voters to nominate candidates. That means voters first nominate a list of preliminary candidates, out of which formal candidates are determined according to the votes they get in the process of nomination. Elections are then held for the voters to choose the head and members of a village residents' committee from among the formal candidates. The decision of Guangdong Provincial CPC Committee is in full compliance with the 1998 Organic Law and the provisions of both the Guangdong Provincial Measures to Implement the Organic Law of the PRC on Village Residents' Committees³⁴ and the Guangdong Provincial Measures on the Election of Village Residents' Committees³⁵ promulgated by the Guangdong Provincial People's Congress.

The author found through field study that the operation of village elections in the two selected towns is completely different. In X town in Qingxin County, with the assistance of officials sent from the Guangdong Provincial CPC Committee, the elections were held in accordance with the relevant legislation and the decision of the Provincial CPC Committee. In Y town in Dongguan City, however, the lists of formal candidates were still determined by the township CPC Committee and voters were not given the right to nominate preliminary candidates of their choice. The implementation of the 1998 Organic Law was substantially different. Why has that been the case?

The most important factor is whether or not the local governments and CPC Committees concerned properly implemented national and local legislation on village elections. Both the 1998 Organic Law and the 2001 Guangdong Provincial Measures on the Election of Village Residents' Committees stipulate clearly that candidates for a village residents' committee must be nominated directly by the voters. But the existence of legislation alone is not enough.

³⁴ Adopted by the 6th Meeting of the Standing Committee of the 9th Guangdong Provincial People's Congress on 27th November 1998, and amended by the 33rd Meeting of the same body on 30th May 2002.

³⁵ Adopted by the 27th Meeting of the 9th Guangdong Provincial People's Congress.

The implementation depends very much on the understanding and operation by the grassroots government and CPC Committees, i.e. the township people's government and the CPC Committee³⁶. The village elections in Y town in Dongguan demonstrate that both national and local legislation on village elections was ignored, the previous practice was followed, and the CPC Committee at township level chose the formal candidates.

But why has the implementation of national and local legislation on village elections in these two towns in the same province been so different? In order to answer this question, one needs to examine the differences between these two towns. Their biggest difference is that one is the poorest while the other is the richest town in Guangdong Province. The annual income generated from the collective assets of the poor village I visited is less than 30,000 RMB. The annual income of Y Town is 300 million RMB and annual income of a village in Y Town must be much higher than 30,000 RMB. The village residents' committee in the poor village does not have any resources under its control whereas its counterpart in a rich village has considerable resources under its control. All persons the author interviewed during the field study, including the newly elected village head of the poor village, were of the view that the primary reason why voters and competent persons in the poor village were not enthusiastic about the village election was that they did not benefit from it. It has been recognised by many Chinese scholars that elections are driven by the interests/benefits of those who participate in the elections including voters and candidates. Only when an election is related to and affects their interests/benefits, will voters be interested in it³⁷. According to this theory, the election in Y Town should have been more democratic. But that was not the case in reality. The interests of voters and candidates won't have much influence when a local government decides to interfere with an election. But why did the people's government in Y town, the organiser of village elections, choose to put aside both national and local election legislation? There might exist many different reasons. But one of the primary reasons is, in the opinion of the author, still interests/benefits. Though the town government can't directly use the resources of a village, it is very likely to benefit indirectly from that village. Hence, it is the interests of the organiser of elections to determine the outcome of the election.

2.4 Summary

It can be seen from the above discussion and analysis that village election practice in some selected cases is developing and maturing under the support of various sectors of society. Not only have the voters in those villages expressed their interest in actively participating in village elections but also the design of the whole election system including the nomination of candidates has improved. This is the positive aspect of village elections. However, only the village elections in the early 1980s discussed above were initiated by village residents. All other good examples of village election are the result of efforts made by various parties, including local CPC Committees and people's governments (especially their civil affairs departments), scholars, and even foreign democratic organisations. In the election case in Yuhang, support was also given by Zhejiang Provincial Civil Affairs Department and the Development Research Centre of the State Council. Hence, it is fair to say that all these good examples of village election are created by the State and local people's governments. Such good examples represent the future of the election reform of village residents' committees. But they are far from being representative of current national village elections.

³⁶ The relationship between CPC organs and governmental organs will be discussed in the next sub-section.

³⁷ See Tang Juan, "Yi 2003 Nian Shenzhen Quji Renda Daibiao Jingxuan Gean Weili Laikan: Gongmin Zizhuxing Jingxuan Renda Daibiao de Dongyin" (The Motive for Citizens to Voluntarily Participate in the Election Competition for Delegates to People's Congresses: Case Study of 2003 Shenzhen People's Congress Election at District Level), in *Renda Yanjiu* (the People's Congress Study), vol. 1, 2004 (vol. 145 in total), at pp. 9-10.

Instead, one can say that they are just individual examples. The conclusion drawn from the author's field study is that the practice of village election in China is still quite different. There is still a long way to go before true democratic elections as stipulated in the 1998 Organic Law becomes actual practice. The author agrees with many other scholars that it is feasible to hold democratic direct elections in villages. But it is not enough to have just the 1998 Organic Law, the support of the Central Committee of the CPC, Provincial People's Congresses and Governments. These are important, but can't guarantee that the Organic Law will be really implemented and enforced in practice. This is because there exists many other factors hindering the democratic progress of village election. Among all such factors, the most important is the opposition from various persons with vested interests. It is therefore essential to establish certain mechanisms in the election procedure to remove such obstacles. Many scholars have discussed how village election procedure can be further improved and have made some very good suggestions. So far as the design of village election procedure is concerned, the author is of the view that the election system of village residents' committees would be perfect if all the recommendations made by these scholars can actually be implemented³⁸.

It is, however, not enough to consider village elections only from the perspective of election procedure. It is necessary to examine how to have true democratic village elections from a broader perspective. Firstly, given that the leadership of the CPC is not only a constitutional principle in China but also a fundamental policy of the CPC, the leading position of the CPC in China is unquestionable. Hence, it is important to ensure that local organisations of the CPC will support local people's governments in their proper implementation of the 1998 Organic Law. Since the current practice of the CPC is that the head of a local CPC Committee should also be the chair of the standing committee of the people's congress at the same level, the unwillingness of a local CPC Committee to strictly implement the 1998 Organic Law makes it impossible for the local people's congress and government at the same level to implement the Organic Law effectively. The case of Y town in Dongguan demonstrates that democratic village elections are impossible without the support and supervision of the local CPC Committee. Secondly, we should also improve the operation of local people's congresses and governments, because they are the actual organisers of village elections. They are the main organs with vested interests, and are very often indistinguishable from the local CPC Committees. Local people's congresses and governments are, however, within the constitutional structure. So it is feasible to ensure that these two institutions are not affected by their vested interests in the implementation of the 1998 Organic Law through the improvement of constitutional structure. Specifically, an independent election committee with no vested interests in the village election can be established to organise it. Thirdly, it is necessary to remove the negative impact of the vested interests of the incumbent head and members of a village residents' committee on the election. This is the easiest problem to be resolved, through the balance of interests. A mechanism can be established to make village residents fully realise that the most direct method to protect their interests is to elect a village residents' committee which can truly represent their interests. With the firm support of the CPC, the inherent advantages of democratic elections, and gradual understanding by village residents of these advantages, the future of village elections in China should be bright.

³⁸ For example, Li Fan edited a book entitled "Zhongguo Xuanju Zhidu Gaige" (Reform of the Electoral Systems in China), Shanghai Jiaotong University Press, Shanghai, 2005. He and other contributors put forward many recommendations in that book.

3. Election System of the People's Congresses

3.1 Statutory Provisions on the Election of People's Congresses

The people's congress system is the fundamental political system in China. The 1982 Constitution has defined the NPC as the national organ of state power and local people's congresses as organs of local state power. There are five levels of people's congresses: national, provincial, municipal, county and township. The 1982 Constitution³⁹ has classified the five people's congresses into two categories. One category consists of township and county people's congresses which are directly elected by voters. The other category consists of the other three levels of people's congresses which are indirectly elected by the deputies to the people's congresses at the next lower level⁴⁰. Hence, the election system of the people's congresses in China consists of both direct and indirect elections.

Detailed rules on the election of people's congresses are set out in the Election Law. The first Election Law of the PRC on the NPC and All Local People's Congresses was enacted in February 1953, which formally established the election system of the PRC⁴¹. It was properly implemented before the Cultural Revolution, but as with other national legislation, was not implemented at all during the Cultural Revolution, from 1966 to 1976. After the Cultural Revolution, in order to effectively protect the election rights of people and improve the people's congress system, the 3rd Plenum of the 11th National Assembly of the CPC decided to amend the Election Law. On 1st July 1979, the Fifth NPC adopted the second Election Law of the PRC, i.e. the 1979 Election Law. The 1979 Election Law differed from the 1953 Law in the following ways. Firstly, the scope of direct election was expanded from township to county level. Secondly, the rule that the number of formal candidates equaled the number of deputies to be elected changed so that the number of formal candidates should in general be more than the number of deputies. Thirdly, voters and deputies to a people's congress have the right to nominate candidates. Fourthly, the principle of secret ballot shall be followed in the election of people's congresses at all levels. Fifthly, very liberal provisions were incorporated for the promotion of candidates, which allowed all political parties, other organisations and voters to use various means to promote the candidates they nominated. Sixthly, if too many candidates are nominated, a pre-election can be held. Seventhly, the rule that a candidate would be deemed elected if he obtained a simple majority of the actual voters (in the case of direct election) or deputies (in the case of indirect election) present at the election was changed so that a candidate must obtain more than 50% of all eligible voters or deputies in order to be elected⁴².

Cai Ding-jian, a leading scholar on the people's congress system in China, has pointed out that in order to meet the demand of people from all sectors of society to participate in politics at the initial stage of economic reform, democracy is the primary objective of the election system established by the 1979 Election Law. He holds the view that of all the amendments, the right to make nominations, permission to use various means to promote candidates, and

³⁹ The PRC has had four Constitutions, in 1954, 1975, 1978, and 1982. The 1982 Constitution has been amended four times, in 1988, 1993, 1999, and 2004.

⁴⁰ See Arts. 59 and 97 of the 1982 Constitution.

⁴¹ For the main contents of the 1953 Election Law, at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4262&lmf=%C8%CB%B4%F3%CE%C4%CF%D7&label=WXZLK&pdmc=010602>, please refer to Cai Ding-jian, "Zhongguo Xuanju Zhidu de Lishi he Xianzhuang" in Cai Ding-jian (ed.), "Zhongguo Xuanju Zhuangkuang de Baogao (The Report on Election Circumstances in China), Law Press, Beijing, 2002, pp. 4-6.

⁴² See Cai Ding-jian, n. 41, pp. 9-10; see also Xie Bao-fu, "Dangdai Zhongguo Xuanju Zhidu Ruogan Wenti Fenxi" (Analysis of Several Issues of Contemporary Chinese Electoral Systems), in Shenzhen University Journal (Social Science Version), vol. 1, 2002.

the rule that the number of candidates should be more than the deputies to be elected are the three essential changes which show the democratic nature of the 1979 Election Law⁴³. Another scholar believes that provisions for pre-election and the adoption of various means to promote candidates may affect the efficiency of election and therefore concludes that to a certain extent the 1979 Election Law sacrifices efficiency for the sake of democracy⁴⁴.

After its promulgation, the 1979 Election Law was amended four times: in 1982, 1986, 1995, and 2004. The most important change made by the 1982 Amendments was to the promotion of candidates. After amendment, candidates could no longer campaign by using different means to promote themselves. Instead, they could only be introduced by those who nominated them to different groups of voters at their meetings. The purpose of this amendment was obviously to restrict open competition among candidates⁴⁵. Hence, the common understanding of Chinese scholars is that the 1982 Amendments were a step backward in democratic development.

Compared with the 1982 Amendments, the 1986 Amendments were regarded as a big step forward towards democratic elections. The major changes made by the 1986 Amendments are as follows. Firstly, the quota of deputies to the NPC was reduced from less than 3,500 to less than 3,000 and the quota for local people's congresses was also dropped significantly. Secondly, voter registration procedure was simplified through adoption of the principle that voters only need to register once, with perpetual effect. Thirdly, the minimum number of voters needed to make a valid nomination of a candidate was increased from 3 to 10. Fourthly, the pre-election procedure which had been used for the determination of formal candidates in both direct and indirect elections was repealed. Fifthly, the majority required for election changed from 50% or more of all eligible voters to 50% of participating voters. Although the 1979 Election Law already established the right of voters to nominate candidates and the principle that the number of candidates should be more than the number of representatives to be elected, in practice pre-elections had often been used by election organisers to make the number of candidates equal to the number of deputies to be elected. Hence, Cai Ding-jian is of the view that these two fundamental reforms in the election system of the people's congresses were only consolidated by the 1986 Amendments⁴⁶.

The 1995 Amendments brought four major changes. Firstly, the difference of the number of voters represented by each deputy in urban and rural areas respectively was decreased in order to make representation more equal. Secondly, the pre-election procedure was reintroduced with the condition that the number of candidates must be greater than the number of deputies to be elected. Thirdly, it was provided that no less than two days should be given to nominate candidates, to ensure sufficient time for the deputies to hold discussions. Fourthly, groups of deputies were given the right to jointly nominate a candidate. Though the number of candidates to be nominated by each group of deputies cannot be more than the number of deputies to be elected, the number of total candidates must be more than the number of total deputies to be elected. Cai Ding-jian is of the view that the 1995 Amendments further improved some specific procedural rules, and made some changes to some election procedures in order to increase their efficiency⁴⁷.

The 2004 Amendments made the following main changes.⁴⁸ Firstly, the provisions for pre-elections became more detailed and specific. For direct elections, once the number of

⁴³ See Cai Ding-jian, n. 41, pp. 13-14.

⁴⁴ See Xie Bao-fu, n. 42.

⁴⁵ See Cai Ding-jian, n. 41, pp. 16-17.

⁴⁶ See Cai Ding-jian, n. 41, pp. 18-20.

⁴⁷ See Cai Ding-jian, n. 41, pp.26-28.

⁴⁸ See Xie Bao-fu, n. 42.

preliminary candidates nominated by voters is more than the maximum number of candidates set out in the Election Law⁴⁹, the election committee shall ask the groups of voters⁵⁰ within the election district to discuss, consult with each other and determine the list of formal candidates according to the majority view of voters. If voters cannot form a consistent view with regard to the formal candidates, a pre-election should be held to determine the formal candidates according to the number of votes each preliminary candidate gets in pre-election⁵¹. For indirect elections, the presidium shall submit the list of candidates nominated according to law to all deputies for consultation and discussion. If the number of preliminary candidates is less than the maximum number of candidates stipulated under the Election Law, all of them will be regarded as formal candidates for all the deputies to elect. If the number of preliminary candidates is more than the maximum statutory number of candidates, pre-election will be held to determine formal candidates according to the number of the votes each preliminary candidate gets and the maximum statutory number⁵². Secondly, in order to respond to increasing demand for democracy, candidates were allowed to meet voters and answer questions raised by voters⁵³. Thirdly, the Election Law was made more workable by clearly defining the concept of "corruption", imposing penalties on illegal election activities, and increasing the categories of administrative penalties for unlawful activities by governmental officials⁵⁴.

It can be seen from the above discussion that after four sets of Amendments and twenty five years of development since the enactment of the 1979 Election Law, China's electoral system of people's congresses has made some progress towards democracy. But so far direct election is still limited to township and county levels and has not been allowed for the other three levels of people's congresses. The degree of democracy is still not high.

Many provisions in the Election Law intend to achieve a balance between two kinds of interests. For example, in the case of direct elections, the election committee established by a people's congress will be in charge of the election of the people's congress at the same level, and the standing committee of a county people's congress shall bear the responsibility of guiding the work of election committees at both township and county levels⁵⁵. So through the appointment of members to an election committee and the leadership relationship between the two organs at high and low levels respectively, indirect influence by state power over elections has been established. On the other hand, however, an election committee is

⁴⁹ Paragraph two of Art.30 of the Election Law provides that "The number of candidates for deputies to be directly elected by the voters shall be from one third to 100 percent greater than the number of deputies to be elected; the number of candidates for deputies to be elected by various local people's congresses to the people's congresses at the next higher level shall be from 20 to 50 percent greater than the number of deputies to be elected". The requirement on maximum number of candidates was there since 1979. But under the original 1979 Election Law and the 1982 Amendments, the number of candidates for deputies to be directly elected by the voters shall be from 50 percent to 100 percent greater than the number of deputies to be elected. The 1996 Amendments changed the requirement to the current formulation under Art. 30 of the Election Law.

⁵⁰ Groups of voters are not defined in the Election Law and they are usually arranged according to the residence of voters. Usually Provincial People's Congress will enact implementing rules to implement the Election Law. But it is usually provided that under such implementing rules that several voters' groups will be established in each electorate.

⁵¹ See the 2nd amendment of 2004 Amendments (2004 Amendments contain 5 amendments); see also Art. 31 of the amended Election Law.

⁵² See Art. 31 of the Election Law.

⁵³ See the 3rd amendment of 2004 Amendments; see also Art. 33 of the amended Election Law.

⁵⁴ See the 5th amendment of 2004 Amendments; see also Art. 52 of the amended Election Law.

⁵⁵ See Art. 1 of "Several Provisions of the NPCSC on Direct Election of Delegates to People's Congresses Below County Level (adopted by the NPCSC on 5 March 1983), at: <http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4429&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=WXZLK&pdm=010602>; see also Art. 7(2) of the Election Law.

subject to various legal constraints in the exercise of its statutory authority under the Election Law⁵⁶, and has to “determine and announce the list of formal candidates according to the majority opinion of voters”. The purpose of this procedure is to prevent an election committee from arbitrarily interfering with or manipulating an election. Furthermore, the provision for the nomination of candidates to the presidiums of local people’s congresses at and above county level, the consultation and discussion procedure for the deputies to decide formal candidates, as well as the procedure in pre-election to determine formal candidates, all reflect the intention of the statutory provisions to balance state power and the right to freedom of election. One view is that such provisions have on the one hand maintained space for state power to interfere with election, but on the other hand have also established the boundaries for such interference⁵⁷. But the author is of the view that the primary objective of such statutory provisions is to ensure that state power, especially the CPC, may get involved in the election process and also maintain a certain amount of control of and influence over elections. The influence of the CPC over elections of people’s congresses is a restriction on democracy and is therefore undesirable.

The adoption of the principle that the number of candidates shall be greater than the number of deputies is regarded as one of the most important results of China’s electoral system reform⁵⁸. An election in which the number of candidates is greater than the number of deputies to be elected is more democratic than the election in which the number of candidates is equal to the number of deputies. The former can better protect the voters’ freedom of election and the realisation of their true intention. It can also make the election more competitive. It is the most democratic provision in the electoral system. Unfortunately, in practice this statutory provision has not always been properly implemented⁵⁹. The provisions in the Election Law for pre-election, discussion, consultation, and deliberation of candidates have changed several times and are now finalised as per the 2004 Amendments. Wu Guo-guang argues that pre-election is a procedure which the CPC can use to find out the voting intention of voters so that it can influence the mind of the voters before formal election⁶⁰, and that the substance of discussion, consultation and deliberation procedures is to “require voters to express to the election organiser how they will vote”⁶¹. Hence, he has come to the conclusion that in effect all these procedures “have the function of substituting for the actual election”⁶². The 2004 Amendments have maintained all these procedures, which give room to election organisers to influence the mind of the voters.

The principle of equality and provision for different treatment supplement each other. It is clearly stipulated in the Constitution and the Election Law that every Chinese citizen of the

⁵⁶ See Art. 2 of “Several Provisions of the NPCSC on Direct Election of Delegates to People’s Congresses Below County Level”

⁵⁷ For details of such limits, please refer to Arts. 21(1) and 22 of the Organic Law on All Local People’s Congresses and Governments (“the Organic Law on LPCG”), and Arts. 30, 31(2), and 35 of the Election Law.

⁵⁸ See Wu Guo-guang, “Zhongguo Dalu de Xuanju Zhidu ji qi Biange” (The Electoral System in Mainland China and its Reform), in Hu Chun-hui (ed.), “Zhong Tai Gang Sandi Xuanju Zhidu he Minzhu Fazhan” (Collection of Essays on Electoral Systems and Democratic Development in Mainland China, Taiwan and Hong Kong), Jianan Printing Co. Ltd., 2000, p. 50.

⁵⁹ For example, the Organic Law on LPCG provides that with regard to the election of heads and deputy heads of governmental organs, if there is only one candidate nominated, an election can also be held. The true intention of this provision is clear and there is nothing wrong about this provision. But in practice, this provision has often been relied on to put forward only one candidate for one position, or the same number of candidates for the same number of positions available. Hence, it has turned out that the number of candidates for heads of governmental organs has often been equal to the number of positions available.

⁶⁰ See Wu Guo-guang, n. 58, p. 41.

⁶¹ Ibid.

⁶² See Wu Guo-guang, n. 58, pp. 42-43.

age of 18 or above shall have equal right to vote and to stand for election⁶³, and Article 4 of the Election Law stipulates specifically that "one voter has only one vote in each election". That may lead one to conclude that every person will have one vote with the same value. But in reality, that is not the case. For example, in the allocation of deputies for urban and rural areas, the relevant provision in the Election Law has maintained unequal treatment between citizens in urban and rural areas, i.e. the number of voters represented by each deputy of a people's congress at county level or above in rural areas is four times the number of voters his counterpart in urban areas represents⁶⁴. Some Chinese scholars are of the view that this statutory provision indicates that there exist some special social and political circumstances and unique understanding of equality in China⁶⁵. In addition, the Election Law has also provided special protection to women, returned overseas Chinese and ethnic minorities to ensure that they are represented in people's congresses⁶⁶. Most Chinese scholars are of the view that the intention of such statutory provisions is to achieve substantive justice in elections and they have had a positive contribution to achieving substantive equality. But there are also scholars who do not accept this common understanding⁶⁷.

The above discussion shows that from a legal perspective, the electoral system of the people's congresses as established by the Election Law is not democratic in the true sense. Through its design of the electoral system and procedures, the Election Law has maintained the possibility for election organisers to interfere with and influence elections. As a result the election outcome may not truly reflect the wishes of voters. But the introduction of the principle that the number of candidates must be more than the number of deputies to be elected and the improvement of some relevant statutory provisions have introduced competition into the election of people's congresses.

⁶³ See Art. 34 of the 1982 Constitution. Article 3(1) of the Election Law provides that "All citizens of the People's Republic of China who have reached the age of 18 shall have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence".

⁶⁴ See Arts. 12(1), 13, and 14 of the Election Law.

⁶⁵ "The common understanding among Chinese constitutional scholars in early days was that cities were the centres of politics, economy and culture, where the working class was relatively concentrated. In order to create favourable conditions to ensure that the working class could exercise leadership it was necessary to have differential treatment of election rights for peasants and the working class. The current common understanding is that on the one hand the election rights for peasants and workers are unequal in formality, but on the other hand such inequality in formality is designed to achieve equality in substance. But Professor Lin Lai-fan is of the view that in constitutional theory equality in substance is in general only applicable to the protection of those groups who are relatively weak in a society and its objective is to achieve real equality. From the current positions held by different classes in Chinese society, the differential treatment in the existing electoral system for peasants and workers is against the achievement of real equality between them". For detailed discussion, please refer to Lin Lai-fan, "Cong Xianfa Guifan dao Guifan Xianfa: Guifan Xianfaxue de yizhong Qianyan" (From Constitutional Norms to Normative Constitution: a Preface to Normative Constitutional Study), Law Press, 2001, pp. 132-133.

⁶⁶ Article 6 of the Election Law provides "[T]he NPC and the local people's congresses shall have an appropriate number of female deputies and increase the proportion of female deputies step by step. The NPC and the local people's congresses of the areas with a relatively large number of returned overseas Chinese shall have an appropriate number of deputies who are returned overseas Chinese"; Article 9(4) of the Election Law provides "The number of deputies of the autonomous regions and provinces where minorities are assembled, through the Decisions of the NPCSC, may additionally increase five per cent. The number of deputies of the counties, autonomous counties, townships and nationality townships where minorities are assembled or peoples reside in decentralisation, through the decisions of the standing committees of people's congresses of provinces, autonomous regions and municipalities directly under the Central Government, may additionally increase five per cent".

⁶⁷ See n. 65.

3.2 Policy Analysis

From a policy perspective, before taking over power in Mainland China, the CPC made it clear that it would organise democratic elections once it came into power⁶⁸. But after it actually came into power in 1949, the CPC came to the view that it would be difficult to have democracy in a country which was poor, undeveloped, and populous. Different senior officials of the CPC expressed on different occasions the view that it was not appropriate for China to have universal, equal, direct and secret elections. Cai Ding-jian has summarised their arguments as follows:⁶⁹ (1) it was difficult for China to have direct elections immediately since China had a huge population; (2) it was difficult to implement the principle of equality in elections as the population of peasants was too large. Otherwise most of deputies to the people's congresses would be peasants; (3) the education level of Chinese citizens was too low and many were illiterate. It was therefore very difficult to have a secret ballot; (4) China did not have enough experience in elections and the masses did not have a good understanding of or enthusiasm for them; (5) when the conditions mentioned above were not satisfied, it would be meaningless to have complete democratic elections. The CPC emphasised the substance of elections rather than the formality. It is therefore clear that the CPC did not accept direct elections and was not willing to do so during the early period after it came into power.

After the Cultural Revolution, the CPC realised it was necessary to reform its political system, and also its electoral system, which led to the enactment of 1979 Election Law. The direct reason for the reform is that some senior leaders of the CPC at that time were of the view that the expansion of direct election and the democratisation of the electoral system would put the masses in direct control of county people's congresses, and indirect control of provincial congresses as well as the NPC. If this were the case, nine hundred million people could participate in the administration of national affairs, and be in charge of their own, and the nation's, fortune. Furthermore, some senior officials also expressed the view that the reform of the electoral system would be a fundamental measure to prevent tragedies such as the Cultural Revolution⁷⁰. Hence, the CPC had the genuine intention to develop a democratic electoral system at the end of the 1970s. By 1987 when the CPC held its 13th National Assembly, the Secretary-General of the Central Committee of the CPC at that time discussed political reform at some length in his Working Report entitled "Moving Forward Along the Socialist Road with Chinese Characteristics" and came to the conclusion that it was time for China to undertake political reform. Especially, he made the following comments on the electoral system of the people's congresses⁷¹:

"In recent years, the degree of democracy in elections in China has been increasing. But the electoral system is still not yet satisfactory and existing statutory provisions have not been implemented fully and effectively. In the future, we should fully respect the will of voters and ensure that voters have the freedom to vote. We should insist on the principle that the number of candidates should be more than positions available, improve the methods for

⁶⁸ See "Selected Works of Mao Ze-dong (combined version)", Renmin Press, 1968 version, pp. 969-970, quoted from Cai Ding-jian, n. 41, pp. 2-3.

⁶⁹ See Cai Ding-jian, n. 41, p. 4.

⁷⁰ See Peng Zhen, "Guanyu Quanguo Xuanju Shidian Gongzuo de Jidian Yijian" (Several Opinions on National Election Work on Trial), in "Xin Shiqi de Shehui Zhuyi Minzhu yu fazhi Jianshe" (Establishment of Socialist Democracy and Legal System in New Era), Central Literature Press, 1989, pp. 38-43; see also "Difang Renda Changweihui de Gongzuo" (The Work of the Standing Committees of Local People's Congresses), also in "Xin Shiqi de Shehui Zhuyi Minzhu yu fazhi Jianshe" (Establishment of Socialist Democracy and Legal System in New Era), Central Literature Press, 1989, pp. 56-58; quoted from Cai Ding-jian, n. 41, pp. 10-11.

⁷¹ See Part V of the Working Report entitled "Yanzhe You Zhongguo Tese de Shehui Zhuyi Daolu Qianjin" (March Along the Socialist Road with Chinese Characteristics).

the nomination of candidates, and the methods to introduce candidates. Practice has proved that rigid statutory provision for the ratio of candidates of different backgrounds is against the freedom of voters to express their own will through elections. In order to ensure that candidates represent different interests, methods other than geographical election can be introduced, including functional constituencies or any other feasible methods.”

The above quotation indicates that the CPC was already considering how to reform the electoral system of people's congresses and had identified some particular areas which needed to be reformed. But after the 4th June event⁷², the political environment became relatively tense. For the 1990 election, the Central Committee of the CPC stated the necessity to stick to the four cardinal principles and to prevent bourgeois liberalisation. But at the same time, it also confirmed the experience achieved in elections at town and county levels since 1979 and stated the requirement to organise elections according to principles established in the 1979 Election Law⁷³. In reality, however, the 1990 election was a step back in the development of democratic elections⁷⁴. Furthermore, the policy of the CPC on the election of people's congresses had also retreated. The best example is the Working Report delivered by Jiang Ze-min, then Secretary-General of the Central Committee of the CPC, to the 14th National Assembly of the CPC, which was entitled “Jiakuai Gaige Kaifang he Xiandaihua Jianshe Bufa Duqu you Zhongguo Tese Shehuizhuyi Shiye de Gengda Shengli” (To speed up Economic Reform, Open-door Policy, and Modernisation so as to Achieve Greater Success in the Socialist Course with Chinese Characteristics). Though he mentioned political reform in his report, he only discussed it very briefly and just pointed out in principle that the objective of political reform was to establish a socialist democratic political system rather than a Western multi-party system or parliamentary system. But he did not mention at all the electoral system of people's congresses.

After 1992, China's political environment became more liberal. At the 15th and 16th National Assemblies of the CPC held in 1997 and 2002 respectively, Jiang Ze-min, then Secretary-General of the Central Committee of the CPC, spent one whole chapter in each of his Working Reports to discuss political reform. He mentioned in both Reports “to have democratic elections, democratic decision-making, democratic administration and democratic supervision, to protect the broad rights and freedoms enjoyed by people according to law, and to respect and protect human rights”⁷⁵. The 4th Plenum of the 16th National Assembly of the CPC adopted the Decision mentioned in Part 1 of this paper. While following the tone set down by the Working Report of the 16th National Assembly in 2004, the Decision has emphasised the establishment of democratic systems. The author's understanding is that the establishment of democratic systems includes the establishment of a democratic system for election of the people's congresses. The White Paper only gives a brief overview of the people's congress system in China without mentioning any policy indications with regard to elections⁷⁶.

⁷² It refers to the students' demonstration at Tiananmen Square which eventually led to crackdown by the Government on 4 June 1989.

⁷³ See Cai Ding-jian, n. 41, pp.24-25.

⁷⁴ See Cai Ding-jian, n. 41, pp. 25, 26 and 30.

⁷⁵ See Part VI of the Working Report of the 15th National Assembly of the CPC entitled “Gaoju Dengxiaoping Lilun Weida Qizhi, ba Jianshe you Zhongguo Tese Shehui Zhuyi Shiye Quanmian Tuixiang Ershiyi Shiji” (Holding on to Dengxiaoping Theory and Pushing forward comprehensively the Course of Establishing Socialism with Chinese Characteristics into the 21st Century), and Part V of the Working Report of the 16th National Assembly of the CPC entitled “Yanzhe You Zhongguo Tese de Shehui Zhuyi Daolu Qianjin” (March Along the Socialist Road with Chinese Characteristics).

⁷⁶ See Chapter 3 of the White Paper.

Hence, the CPC accepts in principle democratic election of people's congresses. But as to how to implement the principle through legislation and in practice, when the scope of direct election should be further expanded, and to what extent voters should be given more autonomy in the election of deputies to people's congresses, the policy of the CPC reached its apex in 1987. Unfortunately, the 4th June event made it impossible to implement the 1987 policy decision as incorporated in the 1987 Working Report of the CPC. The author is of the view that the Decision adopted by the 4th Plenum of the 16th National Assembly of the CPC has confirmed the importance of establishing democratic systems. But the Decision has not put forward any specific proposals on electoral system reform. Meanwhile it has emphasised the necessity to combine the leadership of the CPC, democracy and rule of law. That means a balance needs to be struck between the leadership of the CPC and democratic election of people's congresses. As to how to reach such a balance, or to what extent the democratic aspect of the electoral system should develop, the CPC has not made any clear policy decision yet. The future of the electoral system of people's congresses is, therefore, still uncertain to a large extent.

3.3 Study of Election Practice

As early as 1980, when direct elections were first held for district and county people's congresses, students in some universities in Beijing competed heatedly to become deputies to district people's congresses. In Beijing alone, around 100 students participated in the election. In the end, 8 student candidates who had already passed the pre-election were elected as deputies of Haidian District People's Congress⁷⁷. Later on, both Zeng Jian-yu in Luzhou City, Sichuan Province in 1992 and Yao Li-fa in Qianjiang City, Hubei Province in 1998 participated in the election of local people's congresses upon their own initiative and were successfully elected⁷⁸. Both Zeng and Yao were among the first batch of ordinary citizens standing out for election to local people's congresses upon their own initiative. Their success has been regarded as milestones in the history of direct election of deputies to local people's congresses in China. 2003 has been described by some scholars as the year of citizens' rights⁷⁹; it is also the most recent election year of local people's congresses. In 2003, society and the media once again focused their attention on ordinary citizens' participation in elections as candidates. The difference between this election year and previous ones is that in 2003 more citizens had voluntarily solicited nominations in order to become candidates for deputies of local people's congresses. Furthermore, their participation had become more organised, and their election methods had become more mature. This section will choose to study several cases which have been widely reported by media and analysed by scholars.

The first case is the 2003 election in Qianjiang City, Hubei Province. Yao Li-fa started in 1987 to participate in the election of the Qianjiang Municipal People's Congress as an independent candidate, and was eventually elected a deputy in 1998 when he participated in the election for the fourth consecutive time. In 1998, there were only two independent candidates for Qianjiang Municipal People's Congress. During his term of 5 years as a deputy, Yao Li-fa put forward 187 recommendations/bills to supervise the government. His

⁷⁷ See Wang Yi, "2003: the Year of Citizens' Rights", in *Xinwen Zhoukan* (News Week), vol. 47, 2003, p. 20; see also Luo Li-wei, "Shui Shi Shoupi Duli Jingxuanren?" (Who are the first batch of independent candidates?), in "Nanfang Zhoumo" (Southern Weekends), 12 June 2003; quoted from Zou Shu-bin, Tang Juan, and Huang Wei-ping, "2003 Nian Renda Daibiao Jingxuan de Qunti Xiaoying: Beijing yu Shenzhen Bijiao" (The Collective Effect of 2003 Election of Delegates to the People's Congresses: a Comparison of Beijing and Shenzhen), in "Makesi Zhuyi yu Xianshi" (Marxist Theory and Reality), vol. 2, 2004, p. 36.

⁷⁸ Ibid.

⁷⁹ See Wang Yi, n. 77.

existence had, however, given some local governmental officials a headache⁸⁰. In the 2003 election for Qianjiang Municipal People's Congress, in addition to candidates nominated by political parties and people's organisations, Yao Li-fa participated in the election again as an independent candidate, together with 31 other independent candidates, including current deputies to town and municipal people's congresses, teachers, heads of village residents' committees, deputy secretaries of village CPC organisations, workers and others. After getting the nominations of ten or more voters to become preliminary candidates, they started their election competition activities. But later in the process of repeated consultation and deliberation, most of them had been screened out and only two of them became formal candidates. On the election day, 28th November 2003, the two independent candidates and some other formal candidates got less than 50% of votes from voters participating in the election and therefore were not properly elected. It turned out that the number of elected deputies was less than the number of seats available. According to Article 41 of the Election Law, a by-election should be held to fill in the remaining seats and these two independent candidates would be qualified to be formal candidates in the by-election to be held. But the township election organisation committee did not organise the by-election on the ground that those candidates had no intention to participate in another election and had given up their rights to participate in a by-election. As a result, none of the 32 independent candidates were elected⁸¹. After the election, Yao Li-fa together with some voters were of the view that their rights to vote and to stand for election had been infringed, and therefore petitioned the standing committee of the Qianjiang Municipal People's Congress and some other governmental organs to address the issue. Yao Li-fa also brought a legal action to a local court which refused to accept his case. On 10th January 2004, Yao Li-fa wrote a petition letter to the NPCSC requesting it to start a special investigation procedure to investigate the problems which had occurred in the election of the Qianjiang Municipal People's Congress⁸². As of July 2005, the author is not aware of any organisations, including the NPCSC, investigating or dealing with Yao Li-fa's petition.

The second case is the election of deputies to different district people's congresses in Shenzhen in April and May of 2003⁸³. Seven people stood out to seek nomination to be candidates for deputies to different district people's congresses and were properly nominated as preliminary candidates in the election. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University, in their analysis of the election⁸⁴, classified the seven candidates as either "independent candidates" (or "candidates nominated by the masses") or "self-nominated candidates". The former refers to those candidates nominated by ten or more voters; the latter refers to those who do not become formal candidates but go directly

⁸⁰ See "Luoxuan Renda Daibiao Shangjing Dijiao Shensu: Ti Renmin Shuohua Releshui?" (A Formal Delegate Who Lost Election Went to Beijing to Submit His Petition: What's Wrong with Speaking on behalf of People?), downloaded from: http://news3.xinhuanet.com/newscenter/2004-01/13/content_content_1272302.htm.

⁸¹ See Li Fan, "Cong Qianjiang Renda Xuanju Shijian Kan Zhongguo Jiceng Minzhu de Fazhan" (Analysis of the Development of Chinese Grassroots Democracy through the People's Congress Election Event in Qianjiang), in "The People's Congress Study", vol. 4, 2004.

⁸² See n. 80; see also "Yaolifa Tiqing Renda Diaocha Xuanju, Zijian Houxuanren Quanjun Fumo" (Yao Li-fa Petitions the NPC to Investigate the Election Incident, All Candidates Who Recommended Themselves Lost in Election), downloaded from: <http://cn.biz.yahoo.com/050117/16/68e9.html>.

⁸³ A district people's congress in Shenzhen is at the same level as a county people's congress where deputies are directly elected by voters.

⁸⁴ See Huang Wei-ping, Tang Juan and Zou Shu-bin, "2003 Nian Shenzhen Shi Quji Renda Daibiao Jingxuan Xianxiang de Zhengzhi Jiedu" (Political Analysis of 2003 Competition Phenomenon in People's Congress Election at District Level in Shenzhen City), in "Beijing Xingzheng Xueyuan Xuebao" (Beijing College of Administration Journal), vol. 6, 2003; see also Tang Juan and Zou Shu-bin (eds.), "2003 Nian Shenzhen Jingxuan Shilu" (The Actual Practice of 2003 Election Competition in Shenzhen), Northwest University Press, 2003; see also Huang Wei-ping, Tang Juan and Zou Shu-bin, "Conscious Political Participation of Citizenry and Transformation of Electoral Institutions: A Case Study of the 2003 Competitive Election for Deputies to District People's Congress in Shenzhen", in "Social Sciences in China", Spring 2004.

to the voters, asking voters to vote for them by writing their names in the space provided on the election ballots⁸⁵. According to their research, out of the seven candidates⁸⁶, one is a member of the CPC, three are members of other political parties, and the other three are without any political background. Two became formal candidates by getting nominated by ten or more voters, the other five participated in the election as "self-nominated candidates". Out of these five people, three were initially nominated as preliminary candidates by other political parties and were then screened out during the consultation process to determine formal candidates. The other two nominated themselves⁸⁷. All seven candidates had received higher education and were aged between 35 and 50 years. All but one were financially sound, and their average annual income was around 100,000 RMB, putting them in the middle class in Shenzhen⁸⁸. Huang Wei-ping, Tang Juan and Zou Shu-bin found that all seven candidates experienced obstacles, of two main types. One is that three of them were screened out by the election organising committees within the electorates (which are in fact community residence committees). The other is that the election organising committees within the electorates had either prevented them from participating in the election, or objected to, prohibited, or removed their election campaign posters after they were posted⁸⁹. The election result was that the candidate who was a member of the CPC was elected, the other six were not.

The third case is a district/county election in Beijing, where elections for the change of term of people's congresses were completed by December 2003. There were in total 41,637 nominated preliminary candidates, out of whom 40,906, or 98%, were nominated by ten or more voters. Out of 6,748 formal candidates, 89% were nominated by voters (only 11% were nominated by political parties or people's organisations). 83.2% of deputies successfully elected (3,662) were initially nominated by 10 or more voters⁹⁰. The deputy head of the Beijing municipal working group in charge of the 2003 elections (and vice chairman of the Standing Committee of the Beijing Municipal People's Congress), Mr Fan Yuan-mo, was quoted as follows: "voters can fully exercise their election rights independently. So long as the election is held in accordance with proper legal procedure, the election results should be recognised according to law, and the government will respect such election results"⁹¹.

Although in Beijing 3,662 preliminary candidates nominated by voters finally got elected as deputies to district/county people's congresses, the media focused on about 20 preliminary candidates nominated by 10 or more voters out of whom there were university students, defenders of real estate rights, scholars, lawyers and other professionals. Some of them

⁸⁵ See Tang Juan, "Cong Querenxing Xuanju Zhuanxiang Jingzhengxing Xuanju: Dongyin yu Yiyi - Yi 2003 Nian Shenzhen Quji Renda Daibiao Jingxuan Quntixing Anli wei Jiedu Duixiang" (From Confirmative Election to Competitive Election: Motive and Meaning: A Case Study of the 2003 Collective Competitive Election for Deputies to District People's Congress in Shenzhen), in "Nanjing Social Science", vol. 3, 2004.

⁸⁶ Six of them were named in the press: Xiao Yu-mei, Wu Hai-ning, Zou Jia-jian, Ye Yuan-bai, Xu Bo, and Wang Lijiang. There was another unemployed female not named, Xie Xiao-ying. See Tang Juan, n. 85.

⁸⁷ See Tang Juan, "Cong Querenxing Xuanju Zhuanxiang Jingzhengxing Xuanju: Dongyin yu Yiyi - Yi 2003 Nian Shenzhen Quji Renda Daibiao Jingxuan Quntixing Anli wei Jiedu Duixiang" (From Confirmative Election to Competitive Election: Motive and Meaning: A Case Study of the 2003 Collective Competitive Election for Deputies to District People's Congress in Shenzhen), in "Zhengzhixue Yanjiu" (Political Science Study), vol. 3, 2004, pp. 39-41.

⁸⁸ See Tang Juan, n. 87, p. 41.

⁸⁹ Ibid.

⁹⁰ See Cui Hong, "Beijing: 804 Wan Ren Toupiao Zhixuan Shuoming Renda Daibiao de Fenliang Zhongle" (Voting by 8 Million and 40 Thousand Citizens Indicates That Deputies to People's Congresses Are Treated More Seriously), in Beijing Chengbao (Beijing Morning Post), 11 December 2003.

⁹¹ Ibid.

were public figures, which is properly the main reason why they attracted media attention⁹². Out of those candidates, only Nie Hai-liang, defender of individual property rights, and Xu Zhi-yong, an intellectual and public figure, were elected while all the others lost in the election. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University conducted research on the election experience of those candidates and found that some individual election campaign offices and professional election supporting groups were established in the 2003 election process⁹³, and election planning and organisation appeared. At the same time, campaign style became diversified. Candidates used posters, leaflets, propaganda vehicles, press conferences, and internet dialogues etc. to interact with voters, and to increase voters' understanding of their platforms. They also found that issues of election finance appeared in Beijing⁹⁴, and found that the candidates' consciousness of their rights to stand for election in Beijing was higher than candidates in Shenzhen. The election in Beijing was better organised and the election skills of candidates in Beijing were more mature.

The election results of the first two cases prove the difficulty for either independent or self-nominated candidates to get elected as deputies to local people's congresses. As to the 3rd case, the election results of those candidates studied by Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University prove the same point regardless of the reasons why the majority of those candidates failed in their election. But their research result is contrary to the official information about 2003 election in Beijing. Even if the official information were reliable, one could still conclude, by relying on the three cases discussed above, that it is difficult for independent or self-nominated candidates who are public figures to get elected as deputies to local people's congresses.

Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University came to a very positive conclusion after conducting research on the 2003 elections in Shenzhen and Beijing. Since some people had actively stood for election in both Shenzhen and Beijing, they came to the view that the electoral system of the people's congresses has started its transition from confirmative election⁹⁵ to competitive election. They identify five factors which have induced voters to stand for election. The first is interest-driven. The second is that village and urban residential committee elections in the 1990s have contributed to the accumulation of

⁹² For example, the lawyer Qin Bing who became famous for drafting a sales contract for real estate with 204 clauses, Wang Hai, famed for campaigning against fake products, and so on. For a detailed discussion, please refer to Zou Shu-bin, Tang Juan and Huang Wei-ping, "2003 Nian Renda Daibiao Xuanju Qunti Xiaoying: Beijing yu Shenzhen Bijiao" (The Collective Effect of Competition in 2003 People's Congresses' Election: A comparison between Beijing and Shenzhen), in "Marxism and Reality", vol. 2, 2004.

⁹³ For example, there are "Shu Kexing Public (election) Affairs Office", "Du Maowen Competition Supporting Group" etc.

⁹⁴ See Zou Shu-bin, Tang Juan and Huang Wei-ping, "2003 Nian Renda Daibiao Xuanju Qunti Xiaoying: Beijing yu Shenzhen Bijiao" (The Collective Effect of Competition in 2003 People's Congresses' Election: A comparison between Beijing and Shenzhen), in "Marxism and Reality", vol. 2, 2004, p. 36.

⁹⁵ They are of the view that, while the direct election of deputies to the people's congresses of towns and districts of cities has been in operation for more than fifty years, and the direct election of people's congresses at county level has operated for more than 20 years, there has not been a sufficiently competitive component in the election. For a long time, China's electoral system for people's congresses has been in substance a confirmative election, in which candidates for deputies are usually nominated and/or recommended by the CPC, other political parties, or people's organisations, and are confirmed as formal candidates through proper legal procedure. There is a lack of competition among them, because local CPC and governmental organs responsible for organising elections usually want to ensure these candidates win the elections in order to fulfill their tasks. Voters in reality do not have the right to choose. Their votes are in substance to confirm those formal candidates who must be elected. Within the rules of the game, if one wants to say there is any competition among candidates, the competition is for the candidates to win the trust and support of governmental officials rather than voters. The relationship between candidates and ordinary voters is not close. And ordinary citizens mainly play the role of passive voters. Their votes do not function to show their preferred interests and are not cast according to their interests. In other words, their voting has nothing to do with their interests. For details, see Zou Shu-bin, Tang Juan and Huang Wei-ping, n. 94.

democratic election experience and also laid down a democratic foundation for competitive elections. The third is that the development of a market economy for more than twenty years in China has produced a new group in society, i.e. the middle class. They not only have democratic ideals, but also have the capacity to put such ideals into action. The fourth is that relatively autonomous media have played an important role in election periods to publicise elections, stimulate voters, and build a bridge between candidates and voters. The fifth is that election organisers have shown their reasonableness, appreciation of the rule of law, tolerance and openness towards competitive election⁹⁶.

The three cases discussed above show, firstly, that China's electoral system of the people's congresses is gradually changing. Some people have stood for election on their own initiative to town and district/county people's congresses. The three cases are good evidence of this. We should, however, treat and analyse such changes with caution. On the one hand, the increase in the number of such persons is encouraging. To take the election in Qianjiang as an example, when Yao Li-fa was elected as a people's deputy to Qianjiang Municipal People's Congress, there was only one other person who stood for election on his own initiative. But by 2003, 32 voters including Yao Li-fa volunteered to stand for election as independent candidates, a sixteen-fold increase. If such momentum can be maintained, the democratic progress of electoral reform will be very encouraging in China. As to why there is such a big increase in independent candidates, the author is of the view that it is primarily the effect of the good example set by Yao Li-fa for citizens in Qianjiang City. On the other hand, as far as the whole country is concerned, the number of persons who stand for election on their own initiative and their percentage among all candidates are still very low, and the percentage of such candidates who get elected as deputies is even lower. Furthermore, whether the good example set by Yao Li-fa will continue to have an effect is also questionable, because though he was a very devoted people's deputy, he lost in the 2003 election. Yao Li-fa allegedly lost the election because local government officials unlawfully interfered with the election. But up to now, Yao Li-fa's petition has not been properly dealt with by any organ of either the government or the CPC. This indicates that China's electoral system does not have a mechanism to deal with such illegal behaviour. It also shows that the existing election system or some local governmental officials do not wish to see or encourage persons such as Yao Li-fa to stand in elections for local people's congresses. Under such circumstances, the enthusiasm of people to stand for election will be negatively affected. The election cases in Shenzhen and Beijing have also shown that the election process of those independent and/or self-nominated candidates who had been widely covered by the media were not very smooth and many of them had encountered various kinds of obstacles from local governmental organs. We should also realise that at the present time, elections are still confirmative in the majority of township and county people's congresses in China. The author's investigation in Guangdong has also shown that the election of people's congresses in the two places (one county and one town) is still confirmative and the local governments have not shown any sign or intention to reform their

⁹⁶ See Tang Juan, n. 87 above, p. 42. In another article by the same author with two other scholars, they have said the following: "(1) market economy reform and its development have provided an economic basis for citizens' voluntary participation in politics; (2) the diversification of social interests and the politicisation of diversified interests expression have provided the social basis for citizens' voluntary participation; (3) the development of democracy and rule of law, the change of governing rationale and style of governmental officials have provided a more liberal political environment and lawful room for citizens' voluntary participation; (4) the initial development of open and interactive public media has provided a platform and spiritual support for citizens' voluntary participation." For detailed discussion, please refer to Zou Shu-bin, Tang Juan and Huang Wei-ping, n. 94, pp. 36-37.

current election practice⁹⁷. Hence, there is still a long way to go before the electoral system of local people's congresses completes its transition to competitive election.

Secondly, all three cases described above indicate that the organs of both the CPC and people's governments have shown their tolerance of and even implied consent towards ordinary citizens standing for election in local people's congresses. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that government officials in charge of the 2003 election in Shenzhen were at first not prepared for ordinary citizens standing for election and their campaign activities, but they demonstrated their reasonableness, appreciation of the rule of law, tolerance and openness. At a later stage of the election, they even acted as advisers to one independent candidate⁹⁸. After the 2003 election was over, Shenzhen Municipal People's Congress made very positive comments about the election, treated it as a valuable experiment in democratic politics, and stated that people's wishes should be fully respected and that they would further study the 2003 election practice in order to make elections for grassroots people's congresses fairer, more transparent and democratic, and eventually promote political civilisation⁹⁹. Beijing did better than Shenzhen in that the election committees in Beijing established very formal election information dissemination systems such as press conferences, meetings of candidates with voters, websites for change of term elections, etc. All these have not only enhanced the dissemination of information but also promoted positive interaction between candidates and voters¹⁰⁰. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that the reason why Beijing did better than Shenzhen is because the organisers of the 2003 elections in Beijing had a better understanding of the existing electoral system and believed it had room to accommodate possible reforms of the existing political system¹⁰¹. They are also of the view that Beijing's interpretation of election legislation was more authoritative. Even in the case of the 2003 election in Qianjiang, Chinese media and some experts on village elections in China were of the view that Yao Li-fa was already very lucky even though he lost the election¹⁰². This view shows on the one hand the local government's tolerance of ordinary citizens standing for election upon their own initiative has increased, and on the other hand, there still exist a substantial number of people holding the view that a person might be ill-treated if he stands for election to a local people's congress upon his own initiative.

However, both the tolerance and implied consent of the CPC and governmental organs and the view of "luckiness" of Yao Li-fa prove from the opposite side that there was either no such tolerance before or a citizen standing for election in 2003 might not be as lucky as Yao

⁹⁷ In Qingxin County, candidates for township and county people's congresses were first nominated according to the procedure laid down in the Election Law. Formal candidates were selected through consultation by the election committee. These candidates were then submitted to voters to elect deputies to the people's congresses at township and county levels. In one town in Dongguan City, the candidates for township people's congress were decided by the township CPC Committee. Candidates for heads of the township people's government and CPC Committee were decided by the CPC Committee at the municipal level. There was neither sign nor intention to reform the status quo.

⁹⁸ For example, Futian District People's Congress in Shenzhen acted as adviser to Wang Liang in his campaign to be a deputy to Futian District People's Congress. For details, please refer to Tang Juan, n. 87. It should be noted that the election is about deputies to Futian District People's Congress. So when it gave advice to one candidate, there was apparent conflict of interests. Furthermore, it only gave advice to one candidate but not others, which was obviously unfair to the other candidates.

⁹⁹ See Zou Shu-bin, Tang Juan and Huang Wei-ping, n. 94, pp. 35-43. The concept of political civilization means in essence democratic politics and governance.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² See Yu Shi-cun, "Cui Xianglian de Caipiao he Wo de Meng" (Cui Xianglian's Lottery Ticket and My Dream), originally in "Beijing zhi Chun" (Spring of Beijing), downloaded from: http://www.boxun.com/here/yushicun/42_3.shtml.

Li-fa. The 2003 elections in both Shenzhen and Beijing were experimental. Nationwide, in the 2003 election of people's congresses, the percentage of local people's congresses where tolerance and implied consent were shown towards ordinary citizens standing for election on their own initiative was probably very low. Otherwise, the election in Shenzhen and Beijing wouldn't have attracted the attention of either the media or scholars. Hence, the author is of the view that we should not be too optimistic about the progress of electoral system reform of people's congresses, because this reform has touched upon the electoral system of a governmental organ within the constitutional structure. Such reform may affect the ruling position as well as the ruling style of the CPC. So the CPC is bound to deal with such reform very cautiously. From the previous discussion of statutory rules and the CPC's policy on the electoral system of people's congresses, we already know that the CPC has not decided anything specific about the future of the electoral system of people's congresses, and that existing statutory rules still give room to election organisers, and in fact the CPC, to interfere with and influence the election outcome. Hence, before the CPC makes any clear indication that the existing electoral system of people's congresses should be reformed, the implication of the tolerance and implied consent shown by the CPC towards ordinary citizens' standing for election on their own initiative is far from being clear and is uncertain.

Thirdly, all three cases discussed above have shown that two important factors which have caused citizens to voluntarily enter election competitions are their interests and rights' consciousness. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that interests of the candidates are the fundamental reason and driving force for citizens to stand for election on their own initiative¹⁰³. Their study of the seven candidates in Shenzhen has shown that all had had experience of defending the interests of the specific groups they belonged to¹⁰⁴. The very reason they stood for election was to enhance their political status and social influence so as to better protect the economic interests of their specific groups¹⁰⁵. In comparison, according to the research undertaken by the same scholars of the 2003 elections in Beijing, rights' consciousness of citizens standing for election in Beijing is much higher. Many of the candidates studied have legal backgrounds and good educations. Some even have doctorate degrees. Many have also had experience of defending specific kinds of rights of a particular group. The difference is that while some of them act for the direct, practical interests (e.g. property rights) of a particular group, a large number of them may be acting for the interests of the general public, or trying to exercise the right (to stand for election) which a citizen should enjoy, or satisfying their enthusiasm towards public affairs and politics, or their strong desire to serve the country¹⁰⁶. All of them had very high enthusiasm and ability to participate in politics. This proves that the rights' consciousness of the citizens standing for election, especially their understanding of the right to vote and to stand for election, has increased. This is another encouraging phenomenon.

Fourthly, Huang Wei-ping, Tang Juan and Zou Shu-bin are of the view that the driving force behind the change from confirmative election to competitive election, is the gradual evolution of civil society, leading to the diversification of interests and citizens' voluntary political participation throughout the current system, from the bottom up¹⁰⁷. In contrast to the reform of the village electoral system which started from the top, reform of the people's congress electoral system started from the bottom. As a result, citizens will find it much more difficult to be elected throughout China due to the lack of clear support from the CPC. This has been demonstrated by the 2003 Qianjiang Municipal People's Congress election, especially Yao Li-fa's experience.

¹⁰³ See Tang Juan, n. 87.

¹⁰⁴ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, pp. 38-40; see also Tang Juan, n. 87, p. 41.

¹⁰⁵ Ibid.

¹⁰⁶ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, pp.35-43.

¹⁰⁷ Ibid.

Fifthly, both the first and second cases discussed above demonstrate that the procedure to determine formal candidates in the existing electoral system – discussion, consultation and deliberation – can be used by election organisers to exclude those preliminary candidates they don't like so that such candidates won't become formal candidates. Even after the 2004 Amendments to the 1979 Election Law, discussion, consultation and deliberation are still used as the first procedure for the determination of formal candidates. Only if it fails, will a pre-election be held to determine formal candidates. It is fair to say that the possibility of those candidates disliked by local governments being elected as people's deputies will be greatly reduced so long as discussion, consultation and deliberation are still used as the first procedure to determine formal candidates. This reinforces the conclusion reached from the previous discussion of statutory rules and the CPC's policy on people's congress elections. If we really want to democratise the electoral system of people's congresses, reform must be undertaken to those procedures which replace formal election, and the best solution is to repeal those procedures, i.e. discussion, consultation and deliberation.

Sixthly, independent and self-nominated candidates are mainly persons from political parties other than the CPC or persons without any political background. This phenomenon is normal in China, because if a member of the CPC is keen to stand for election, he will first try to get nominated by the CPC. If that can be done, his chance of getting elected as a people's deputy will be very high. Otherwise, if he stands for election as either an independent or self-nominated candidate, he needs to compete with candidates nominated by the CPC, and he will also be regarded as not following the directions of the CPC, which will affect his future development. Hence, under current political circumstances, it is necessary to make democratic the nomination process of candidates to the people's congresses within the CPC, which will indirectly enhance the democracy of the election of people's deputies.

3.4 Summary

The election of people's congresses is related to the election of state power organs. Hence, in theory, it is the most important one out of the three electoral systems discussed in this paper. Whether or not the electoral system reform of people's congresses is successful will have a serious influence on the ruling position and style of the CPC. According to the previous discussion, the CPC has not so far made public any specific policy with regard to the direction of the electoral system reform of people's congresses. At most, it has shown its "tolerance and implied consent" towards citizens' standing for election to local people's congresses under the existing electoral system. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that "in an authoritative society, any reform can't succeed without interaction with the government, and the reform progress can't deviate too much from the existing system and structure"¹⁰⁸. This view is quite correct in China. On the other hand, we should make full use of the rights which already exist under current electoral system. Under current circumstances, as more and more citizens take seriously their constitutional and legal rights to vote and to stand for election, such rights under the Election Law might well become realised while the effectiveness of some procedures under the Election Law that serve to substitute for formal elections, such as discussion, consultation, and deliberation among voters, will be reduced. Hence, the Chinese citizens should take seriously the rights granted to them by China's Constitution and Laws.

As to the future of the electoral system of local people's congresses, the view of Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University is that

"the democratic spirit under the electoral system established by existing legislation has been explored more and more by voters. More and more

¹⁰⁸ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, pp.35-43.

voters are making use of their statutory rights to jointly nominate candidates and to have more candidates than deputies to be elected. This has given us an important message: development of democracy and progress of a society do not depend on drastic change of the whole system. Rather, it relies on the accumulation of each and every minor case of change and the citizens' demand for the enforcement of their statutory rights. Within the framework of the electoral system under existing legislation, by following a case-by-case and progressive approach, and the rule of law principle, China may find a unique new road towards democracy, i.e. through the practical competitive election experience of citizens, to promote a new interpretation of the existing Election Law, and gradually amend and improve the Election Law and regulations so as to make them more adaptable to the needs of the development of local competitive election politics"¹⁰⁹.

There is no doubt that China should progressively develop its electoral system of local people's congresses. Having considered the absolute ruling position of the CPC in China, the progress may be extremely slow and sometimes it may be difficult to move one step forward if we rely solely on citizens' participation in competitive elections of people's deputies from bottom up. In China, only when the CPC accepts and promotes the electoral system reform of people's congresses, exercises self-restraint, and does not use informal procedures to interfere with and influence the election of local people's congresses, can the electoral system of local people's congresses possibly have any substantial changes. If one expects the CPC to actively promote the electoral system reform of the people's congresses, one must prove and convince the CPC that such reform won't affect the ruling status of the CPC, and might only affect the ruling style of the CPC.

As to the future of the election of all people's congresses, based on the previous discussion, there are still many problems with the election of local people's congresses, especially township and county people's congresses. The most fundamental problem is that the election might not reflect the true wishes of voters, and the election organisers' interference with and influence over the election is still very significant. Reform should first start with grassroots people's congresses rather than the expansion of direct election to people's congresses at higher levels. The biggest advantage of starting reform from the grassroots people's congresses is that such reform will only touch upon the ruling style of local CPC Committees rather than the ruling status of the CPC nationwide. Furthermore, if the electoral system reform of local people's congresses proves to be good, that might well contribute to the consolidation of the ruling status of the CPC.

What finally needs to be pointed out is that what have been discussed here is election of people's deputies to the people's congresses, not about the chairmen or members of the standing committees of people's congresses. The chairmen and members of the standing committees are elected by all the deputies to the people's congresses and their electoral system is the same as that of officials of governmental organs and therefore will be discussed in the next part of this paper.

4. The Electoral System of Officials of Governmental Organs

4.1 Statutory Provisions on Election of Officials of Governmental Organs

According to the theory of the people's congress system, the people's congress at each level will elect the main officials of all governmental organs at the same level. This has been

¹⁰⁹ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, p. 42.

regarded as the fundamental guarantee that the source of state power is people and state power is finally subject to the control of the people¹¹⁰. Specifically speaking, the NPC will elect or decide the following main officials of the highest governmental organs: (1) the Chairman, Vice Chairmen, Secretary-General and members of the NPCSC; (2) the President and Vice President of the PRC; (3) the candidate for Premier of the State Council; (4) Vice Premiers, State Councillors, Ministers of all ministries, Commissioners of all commissions, Auditor-General, and Secretary-General of the State Council; (5) Chairman of the Central Military Commission; (6) members of the Central Military Commission; (7) President of the Supreme People's Court; (8) Procurator-General of the Supreme People's Procuratorate¹¹¹. As far as election procedure is concerned, the Organic Law of the PRC on the NPC stipulates that candidates for the Chairman, Vice Chairmen, Secretary-General and members of the NPCSC, the President and Vice President of the PRC, the President and Vice President of the PRC, Chairman of the Central Military Commission, President of the Supreme People's Court, and Procurator-General of the Supreme People's Procuratorate, will be nominated by the Presidium¹¹². The Presidium will determine the formal list of candidates according to majority view after submitting the list of nominated candidates to each group of delegates for deliberation and consultation¹¹³; the candidate for Premier will be nominated by the President¹¹⁴. Candidates for the State Council will be nominated by the Premier¹¹⁵. The candidates for the Central Military Commission will be nominated by the Chairman of the Central Military Commission¹¹⁶. The number of candidates for all above mentioned positions will be equal to the number of positions available.

According to the provisions of the 1982 Constitution and the Organic Law on LPCG, each local people's congress shall elect the members of the standing committee of that congress, head and deputy heads of the people's government, including provincial governors and vice governors, autonomous regional chairmen and vice chairmen, mayors and vice mayors, prefectural leaders and deputy leaders, county heads and deputy heads, district heads and deputy heads, township heads and deputy heads, presidents of the people's courts, and public prosecutor-generals of the people's procuratorates.¹¹⁷ The same Organic Law stipulates that the Presidium of and deputies to the same people's congress shall exercise this right according to law¹¹⁸. Hence, the head and deputy heads of local people's governments will be elected by the people's congress at the same level and the right to nominate candidates for main officials of local people's governments will also be exercised by the Presidium of or the deputies to the people's congress at the same level.

The main difference between elections of main officials of central and local governmental organs is that for central governmental organs, the number of candidates equals the number of positions available whereas for local governmental organs the number of candidates

¹¹⁰ See Cai Ding-jian, "Zhongguo Renmin Daibiao Dahui Zhidu" (The National People's Congress System in China), 4th ed., Law Press, 2003, pp. 27-30.

¹¹¹ See the provisions in Arts. 62(4)-(8) of the 1982 Constitution. In theory, there exists difference between "elect" and "decide". If an office is for election, such as the President, different candidates could be put forward though in practice only one formal candidate will be nominated for each position and the Presidium will make a decision on the formal candidate if more than one candidates were proposed. If an office is to be decided, such as Premier, only the President can nominate a candidate for Premier and the NPC's role is to decide whether or not to accept him through voting.

¹¹² The Organic Law of the PRC on NPC does not stipulate the method to produce the Presidium. Instead, it only provides for the functions of the Presidium.

¹¹³ See Art. 13 of the Organic Law of the PRC on NPC.

¹¹⁴ See Art. 62(5) of the 1982 Constitution.

¹¹⁵ *Ibid.*

¹¹⁶ See Art. 62(6) of the 1982 Constitution.

¹¹⁷ See Art. 101 of the 1982 Constitution; Arts. 8(4) and (5), and 9(6) and (7) of the Organic Law on LPCG.

¹¹⁸ See Art. 21(1) of the Organic Law on LPCG.

should in principle be more than the number of positions available and only in exceptional cases can the number of candidates be equal to the number of positions available. This principle was first laid down in the 1979 Organic Law on LPCG¹¹⁹, and has had some changes thereafter.¹²⁰ The present statutory provision was incorporated by the 1995 Amendments. Article 22(1) of the Organic Law on LPCG stipulates clearly that "[T]he number of candidates for people's congress standing committee chairmen and secretary generals, township, minority nationality township, and town people's congress chairmen, people's government regular leaders, people's court presidents, and public prosecutor-generals should be generally more than one, for election balance; when there is only one nominated candidate, elections can still be held" Article 24 of the same Organic Law provides that "If the number of the elected persons who obtain more than half of the votes is less than the number of persons needed to be elected, another election shall be held to make up the difference" The latter election should be competitive and the number of candidates should be more than the positions available.¹²¹ The same Organic Law also provides that "when by-elections are held by the local people's congresses at various levels for various positions of local governmental organs, the number of candidates may exceed or equal the number of vacancies"¹²² It can be seen from these statutory provisions that with the exception of heads of governmental organs and by-election of all heads and deputy heads of all governmental organs, election should follow the principle that the number of candidates should be more than the number of positions available.

Statutory provisions for pre-elections are also relevant to the election of officials to local governmental organs. The 1979 Organic Law on LPCG provided that pre-elections could be used to determine formal candidates when the number of candidates was more than the number of positions available in an election. But the 1982 Amendments changed this to "An election may follow the principle that the number of candidates may be more than the number of positions available. Pre-elections may also be used to determine candidates before the election is held". Scholars' interpretation of this provision is that the number of candidates can be equal to the number of positions available if a pre-election is held¹²³. The 1995 Amendments added a condition that the number of formal candidates must be more than the number of positions available. That is to say, when the number of preliminary candidates nominated exceeds the statutory maximum number, a pre-election should be held. But after the pre-election, the number of formal candidates must be more than the number of positions available. Hence, scholars are of the view that pre-election under the Organic law on LPCG after 1995 Amendments has become a statutory democratic procedure in determining formal candidates for indirect elections¹²⁴.

¹¹⁹ The 1954 Organic Law on LPCG was silent on whether the number of candidates should be more or equal to the number of positions available for local governmental organs. The practice was that the number was always equal to the number of positions available before 1979.

¹²⁰ The 1982 Amendments made one important change to the election of officials to local governmental organs, i.e., to change the original provision that the number of candidates must be more than the number of positions to the provision that two methods can be used, one is that the number of candidates should be more than the number of positions, the other is that a pre-election can be held to determine candidates before the formal election is held. Scholarly interpretation of the effect of the amendment is that so long as pre-election is held, the number of candidates can be equal to the number of positions in the formal election. See Cai Ding-jian, n. 41, p. 16. The main change of the 1986 Amendments is that in the election of heads to the people's governments, the courts and procuratorates, the number of candidates should normally be more than one person, but if there is only one candidate, the election can also be held; in the election of deputy heads to those three organs, the number of candidates must be more than the number of positions (before the amendments, the number of candidates for heads and deputy heads of those three organs could either be equal to or more than the number of positions).

¹²¹ See Art. 24(3) of the Organic Law on LPCG.

¹²² See Art. 25 of the Organic Law on LPCG.

¹²³ See Cai Ding-jian, n. 41, p. 16.

¹²⁴ See Cai Ding-jian, n. 41, p. 27.

It can be seen from the above discussion that although officials of both central and local people's governments are elected by the people's congresses at the same levels there is a substantial difference between them. The nomination process for candidates for central governmental organs to a large extent is under the control of the Presidium and the number of candidates is equal to the number of positions available. Hence, the legislative intention is very clear that all nominated candidates should be elected by the NPC and/or the NPCSC and there should not be any problems in the process of determination of formal candidates and formal election. As for the election of heads of local governmental organs, the relevant statutory provisions have also left room for an election in which the number of candidates is equal to the number of positions available. As for deputy heads of local governmental organs, it is clearly provided that the number of candidates must be more than the number of positions available. Such unequal arrangements show that the degree of democracy differs in the election processes in which people's congresses at different levels exercise their statutory right to elect officials to governmental organs. The relevant people's congresses do not really enjoy the authority to democratically elect officials to central governmental organs and heads of governmental organs at local levels. For deputy heads of local governmental organs, local people's congresses enjoy comparatively more authority.

4.2 Policy Analysis

The relevant statutory provisions discussed above relate in essence to the relationship between the people's congresses' authority to democratically elect and/or appoint officials of governmental organs at the same level and the leadership of the CPC. As far as the electoral system of officials to both central and local people's governmental organs is concerned, the leadership of the CPC functions through the specific policy of the CPC that the CPC will be responsible for the selection and administration of cadres (officials). The issue becomes then the relationship between this CPC policy and the people's congress system.

The principle that the CPC is responsible for the selection of cadres is a fundamental principle of the CPC, and a reflection in practice of the Chinese Constitutional principle of insistence on the leadership of the CPC. The Central Committee of the CPC adopted in 2002 the "Regulations on the Selection and Appointment Work of Cadres of Both CPC and Governmental Organs" ("the Regulations"), which stipulates explicitly that the principle must be followed in the selection and appointment of cadres of both CPC and governmental organs¹²⁵. One scholar has summarised the principle into two aspects: one is that the relevant CPC organs enjoy the authority of appointment and administration of cadres. The other is that this principle includes administration and appointment of all cadres by the CPC organs at different levels¹²⁶.

Article 4 of the Regulations provides:

"These regulations apply to the selection and appointment of cadres to the working departments and/or internal institutes of the Central Committee of the CPC, the NPCSC, the State Council, the National People's Consultative Committee, the Central Disciplinary Committee of the CPC, officials (not including the heads) to the Supreme People's Court, Supreme People's Procuratorate and their internal institutions, officials to local CPC organs, people's congresses, people's governments, political consultative committees,

¹²⁵ See Art. 2(1) of the Regulations.

¹²⁶ See Xu Xiang-lin, "Dang Guan Ganbu Tizhi xia de Jiceng Minzhu Gaige" (Grassroots Democratic Reform under the System in which the CPC Is in Charge of Cadres), in "Zhejiang Xuekan" (Zhejiang Scholarly Journal), vol. 1, 2004, quoted from: <http://www.chinaelections.org/readnews.asp?newsid=%7BB62A622B-202A-46AE-A9BC-86146A82368D%7D>.

people's courts, people's procuratorates at and above county level, and their internal institutions, as well as officials to the internal institutions of the working organs mentioned above.

Reference should be made to these regulations for the selection and appointment of officials to institutions directly under the leadership of the CPC organs and people's governments at and above county level, trade unions, youth leagues of the CPC, women's association and any other people's organisations.

Reference should be made to these regulations in the selection and appointment of officials who are not CPC members.

Reference should also be made to these regulations in the selection and appointment of persons to non-leaders' positions above county level (Chuji)."

It can be seen from this provision that the scope of application of the Regulations is very broad, covering the selection and appointment of all cadres at and above county level, cadres of all CPC organs, and cadres of all governmental organs, whether CPC members or non CPC members.

The CPC will not give up this principle. The issue then becomes whether this principle can exist in harmony with the people's congress system, and how to reform the election of officials of both central and local governmental organs under this principle. Article 43 of the Regulations states that "when a CPC Committee recommends to a people's congress or its standing committee candidates of officials to positions which need to be elected, appointed or decided by either a people's congress or its standing committee, it should first introduce its recommendation opinions to the interim CPC organ within the people's congress or the CPC organisation of the standing committee of the people's congress. The interim CPC organ, the CPC organisation within the standing committee of the people's congress and CPC members of the standing committee and of the people's congress, should seriously implement the recommendation opinions of the CPC Committee, take the lead in doing things according to the law, and correctly perform their obligations." This provision clearly requires the CPC organisations and members within the people's congress and its standing committee to obey the decisions made by the relevant CPC organs and support the candidates recommended to the people's congress by the relevant CPC Committee. Under present circumstances where a majority of members of people's congresses at all levels are CPC members, if there is nothing unusual happening, it will be very easy for the candidates recommended by CPC Committees to be successfully elected.

While emphasising the leadership of the CPC, the Regulations also recognise the importance of democratic election procedure, and stipulate open selection and competition for post as one of the methods to select and appoint cadres of both CPC and governmental organs¹²⁷. But this method only applies to the officials of departments of local CPC Committees and local governments¹²⁸, and the whole process is also under the leadership of the CPC organisations and the final decision-making power is also in the hands of the CPC Committees (or organisations)¹²⁹.

¹²⁷ See Art. 49(1) of the Regulations.

¹²⁸ See Art. 49(2) of the Regulations.

¹²⁹ See Art. 51 of the Regulations.

Hence, from a policy perspective, the CPC Committees possess the appointment authority of cadres at county level or above and the purpose of elections of officials to governmental organs by people's congresses at the same level is to implement the decisions made by the relevant CPC Committees. As to officials below county level, their selection and appointment are not governed by the Regulations and hence there is more room for reform. The White Paper does not make any policy guidelines with regard to the reform of the election of officials to various governmental organs.

4.3 Analysis of Election Practice

As for the election of township and county heads, the usual practice in China can be summarised as follows. Firstly, the organisation department of the CPC Committee at the relevant level will conduct a review of cadres and consult the masses. Then the CPC Committee at the same level will collectively decide the candidates and recommend them to the presidium of the people's congress at the same level, and the presidium will formally nominate them as candidates to the people's congress. In law, the deputies to the people's congress have lawful rights to jointly nominate candidates and such rights should not be interfered with. But if any other candidates have been nominated who are not candidates nominated by the CPC, the usual practice of the CPC Committee actually in charge of the election is either to use political means to persuade those who made the nomination to withdraw their nomination or to prevent the candidates so nominated from participating in the election. Hence in reality, the CPC monopolises the nomination, and the lawful right of deputies to jointly nominate candidates is denied by the CPC¹³⁰. The first part of the CPC practice is consistent with the relevant statutory provisions and also in accordance with the Regulations. But the second part of it, i.e., to persuade the nominators to withdraw their nomination and to prevent such nominees from participating in elections, is neither lawful nor in accordance with the Regulations.

But since 1998 onwards, this traditional practice has faced challenges in the election of officials at township and county levels, and has attracted the attention of both Chinese and foreign scholars. In one article entitled "Research on the Reform of Township Election Method in Mainland China"¹³¹, four scholars from Shenzhen University analyse some experimental cases of township head election reform during the period from 1998 to 2001 and list five different models used in township elections. The author has found two additional models. The seven models can be put into two categories: (i) models in full compliance with existing statutory provisions but different from traditional election practice; and (ii) models deviating from statutory provisions. They are summarised as follows.

(a) Models in Compliance with Existing Statutory Provisions

Out of the seven models, only one is in full compliance with existing statutory provisions, which is the "direct nomination and election" model. At the end of 1998, eleven towns in ten counties in Mianyang City in Sichuan Province were selected to try a new method to elect

¹³⁰ See "Guanyu Rendaihui Lianhe Timing Wenti de Tanta" (Discussion of the Issue of Joint Nomination of Candidates to People's Congresses) (a group of articles), originally in "Fa Xue" (Legal Science), vol. 8, 1999, quoted from Zou Shu-bin, "Xiangzhengzhang Zhixuan yu Xiangzhen Renda de Jiaose Zhuanhuan" (Direct Election of Township Heads and the Change of Roles of Township People's Congresses), in "Renda Yanjiu" (People's Congress Study), vol. 4, 2003, downloaded from: <http://www.world-china.org/06/0603052606.htm>.

¹³¹ See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, "Zhongguo Dalu Xiangzhengzhang Xuanju Fangfa Gaige Yanjiu" (Study of the Reform of Township Head Electoral System in Mainland China), in "Dangdai Zhongguo Yanjiu" (Contemporary China Study), vol. 4, 2001, (total vol. 75), downloaded from: <http://www.world-china.org/04/0402112202.htm>.

township heads in which candidates would be directly nominated and elected by deputies to township people's congresses¹³². According to the provisions of the Organic Law on LPCG¹³³, candidates in all eleven selected towns in Mianyang were jointly nominated by people's deputies to the relevant people's congresses. Twenty three candidates in total were nominated. Three out of the eleven towns had only one candidate each. In the other eight towns, the number of candidates was more than one. Throughout the election process, the organisation department of the relevant CPC Committee in charge of elections did not set any requirements or give any suggestions. Candidates were required to answer any questions raised freely by people's deputies within a fixed time limit. The order for candidates to answer questions was decided by drawing lots. When formal elections were held, deputies could cast their votes according to their own will without any interference as rooms for secret ballots were arranged in advance. After all people's deputies cast their votes and the ballots were counted, the election result was announced immediately and certificates for winning the elections were issued on site¹³⁴. The final result was that in seven towns, the incumbent township heads won the election, while in the remaining four towns new heads were elected. All those who won the elections were CPC members¹³⁵.

(b) Models in Conflict with Existing Statutory Requirements

"Zhi Xuan" (Direct Election)

Of the models which have gone beyond the limits of existing statutory requirements, the one which should be discussed first is the township head election in Buyun Town, which is regarded as the first case of direct township head election in China¹³⁶. At the end of 1998, Buyun Town in Shizhong District, Suining City, Sichuan Province started the experiment of allowing citizens to directly elect the township head. With the support of the CPC Committee of Shizhong District, the Presidium of Buyun Township People's Congress adopted the "Trial Method for Direct Election of Township Head by Voters in Buyun Town of Shizhong District of Suining City" ("the Trial Method"). According to the Trial Method, any 30 voters might jointly nominate a candidate for township head. As a result, 15 candidates were nominated in this way. Thereafter, a joint committee of 162 persons consisting of all village cadres, representatives of village residents, cadres of village residents' groups, members of the Presidium of Buyun Township People's Congress, and all officials of the township CPC Committee and governmental organs voted on the 15 candidates in a pre-election. The two getting the most votes in the pre-election became formal candidates for township head. In addition, the CPC Committee also nominated one formal candidate, so in total there were three formal candidates for direct election. Thirteen meetings were arranged thereafter in different villages for the three candidates to deliver their election competition speeches to voters and to answer any questions raised by voters. Thereafter, all voters in Buyun Town cast their votes. After the election, the Buyun Township People's Congress held a meeting in which deputies clapped their hands to recognise the township head elected by voters. So on 4 January 1999, the very first directly elected township head entered office. That township

¹³² See Organisation Department of the CPC in Mianyang City, "Zhuazhu Guanjian, Quebao Xiangzhen Renmin Daibiao Zhijie Timing Xuanju Xiangzhenzhang Shidian Gongzuo Yuanman Chenggong" (Focus on the Essentials to Ensure the Success of the Experiment in the Election of Township Heads through Direct Nomination by Deputies to the Township People's Congresses), quoted from Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹³³ Article 21(2) of the Organic Law on LPCG states ". . . With joint written sponsorship by over 10 delegates to township, minority nationality township, or town people's congresses, candidates can be nominated for people's congress chairmen and vice chairmen and people's government leaders."

¹³⁴ See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹³⁵ See n. 132.

¹³⁶ For a detailed description of the election process in Buyun Town, please refer to Li Fan, n. 10.

head is also regarded as the first governmental official directly elected by voters in China¹³⁷.

This model of direct election is competitive, uses ballots, and uses the one-person-one-vote method to elect the township head. According to the current Constitution and Election Law, however, it is the authority of a township people's congress to elect a township head. So the reform in Buyun Town deviated significantly from the existing electoral system and has been described as unconstitutional¹³⁸.

"Sanlun Liangpiao Zhi" (Two Ballots in Three Rounds)

In 1999 when Dapeng Town in Longgang District in Shenzhen City held its township head election, it experimented with reform. The whole town was divided into 17 small districts according to the number of voters in the CPC and governmental organs, enterprises, villages and residential communities. Each district organised meetings of voters, in which voters could nominate candidates for township head through secret ballot according to the requirements set down in advance for candidacy¹³⁹. In the end, 76 candidates were nominated in total, of whom the incumbent township head, Li Wei-wen, got the highest votes, 3,323, or 65.8% of total votes¹⁴⁰. The township CPC Committee then examined the qualifications of the six candidates who got more than 100 votes, and came to the conclusion that five out of them met the requirements and would become preliminary candidates for township head. All these five preliminary candidates were then required to give their election speeches at a gathering of 1,068 persons consisting of all CPC members, cadres, workers and representatives of all families in villages in the town. All those present at the gathering would give their comments on the 5 preliminary candidates and cast their votes to determine the best candidate. The one who got the highest votes would be recommended to the township people's congress as the only candidate after examination and confirmation by the township CPC Committee. The person who got the highest votes was Li Wei-wen, with 813 votes in total, which was 76% of all votes cast. The township people's congress then held its meeting to formally elect Li Wei-wen as township head for another term¹⁴¹. Out of the three rounds of voting, the first round represented the will of the general public; the second round represented the will of the representatives present at the gathering. Scholars called these two rounds together as recommendation votes of the people's will. The third round was the statutory election vote. That is why this election model is called "three rounds two votes"¹⁴².

Some scholars are of the view that the election in Dapeng Town created a new model in which the township head is democratically elected while the existing system for the election of township head has also been followed. It is therefore regarded as an invention. Furthermore, they are of the view that this model has combined the indirect democratic mechanism of the people's congress system with the democratic mechanism of direct election by the voters, and that the new model has combined insistence on the leadership of the CPC with giving a full role to democracy¹⁴³. Since in this model the candidate who gets the highest votes in the first two rounds is nominated as the only candidate to the township

¹³⁷ See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹³⁸ Ibid.

¹³⁹ The two specific conditions are: (1) a candidate must get more than 100 votes; (2) the age of a candidate should not exceed 50.

¹⁴⁰ Among 5,259 voters in the Town, 5,048 actually voted. The returned valid votes were 5,039.

¹⁴¹ Quoted from Bai Yi-hua, "Gaige Xuanju Zhidu Kuoda Nongcun Jiceng Minzhu – Jianping Shenzhen Shi Longgang Qu Dapengzhen Zhenzhang Xuanju Zhidu Gaige Jingyan" (Reform of Electoral System to Expand Grassroots Democracy in Countryside – also Comment on the Township Head Electoral System Reform Experience of Dapeng Town of Longgang District in Shenzhen), in "Marxism and Reality", vol. 3, 2000.

¹⁴² See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹⁴³ Ibid.

people's congress, it has in effect denied the deputies to the township people's congress their statutory rights to jointly nominate candidates for township head. The author is therefore of the view that this model has gone beyond existing legal norms for township head elections.

"Mintui Jingxuan" (Competition Based on Mass Recommendation)

This new model first appeared in the township head election held in November 2004 in Jiangjiashan Town, Kecheng District, Quzhou City, Zhejiang Province. Under this new model, firstly, three preliminary candidates are nominated through the recommendation of all cadres at township level, the recommendation of representatives of village cadres and residents, and the recommendation of all members of the district. Secondly, the organisation department of Kecheng District CPC Committee organises the three preliminary candidates to go to different areas in Jiangjiashan Town to deliver their election speeches and to answer questions from village residents. Thereafter all qualified village residents and employees in governmental organs in that town and in township enterprises cast their votes to elect two candidates. At last the Presidium of Jiangjiashan Township People's Congress holds a meeting to nominate these two candidates as formal candidates for township head according to statutory procedure. After the two candidates give their election speeches, all deputies to the township people's congress cast their votes and the one who gets more votes is successfully elected as township head¹⁴⁴.

Compared with the "three rounds two votes" model, this model has changed the nomination of candidates by voters to "nomination through three kinds of recommendation", and has also changed one candidate determined by the township CPC Committee to two candidates determined by a group of persons of different backgrounds. Hence, this new model could better represent the will of the general public in the town and also be more competitive. But this model does not let the deputies to the township people's congress exercise their right to jointly nominate candidates. It could also be argued that this model has gone beyond the limits of existing legal norms for elections.

"Hai xuan" (Nomination of Candidates and Election by the Masses)

Hai xuan started with the election of village residents' committees. It has in recent years been used in the election of township and even county heads. It was reported that one county head was elected through "Hai xuan" in October 2004 in Fuyu County in QiQiHaEr City, Heilongjiang Province. In this county, the right to nominate candidates for governmental officials was given to ordinary citizens. After nomination, all officials at middle level and above in the governmental organ where the elected person would work, i.e. Fuyu County, would ask the candidates questions face to face, make observations on the performance of the candidates, and then elect, through voting, six candidates. The results would be announced immediately on site. The six candidates would then go through the election procedure and one would be elected as county head. Wang Zhao-xian, aged 39, was the first county head elected through this new procedure¹⁴⁵. Du Ji-ming, the deputy secretary-general of the CPC Committee in QiQiHaEr City in charge of selection and appointment of governmental officials, was of the view that his city had gradually formed some basic norms and procedures for selection and appointment of officials based on "democratic recommendation, public evaluation, mass nomination, examination of more candidates than posts available, and decision made by ballots". He further observed that his city had given

¹⁴⁴ This model was researched by the author's assistant, Zheng Lei.

¹⁴⁵ See Cui Shi-xin, "Qiqihaer Haixuan Xianzhang: Ba Timingquan Jiaogei Qunzhong" (Qiqihaer City Experimented Election of County Head through Mass Election: Giving Nomination Right to the Mass), in *People's Daily*, 19 October 2004, p. 10.

sufficient consideration to the public's right to information, right to participation, right to selection and right to supervision. Throughout the election process, openness and transparency had been emphasised and required in order to ensure fairness and justice in election. Nomination by ordinary citizens was the key element of the whole process of election¹⁴⁶. Official media noted that the practice in QiQiHaEr City was a positive development in direct elections at the level of local governmental organs, and is a reflection of the deepening of democratic practice¹⁴⁷.

Strictly speaking, the model is not really election of a county head by the masses (haixuan). It is only the nomination of candidates for county head by the masses. Not all voters in the county could cast votes to determine the candidates, just officials at middle level or above in the county. Once the candidates are selected, the election is held according to existing election law to elect the county head from among those candidates. The method used to determine formal candidates in this model can also be argued to have gone beyond the limits of existing legal norms for elections because the right to nominate candidates has been taken away from the deputies to the people's congress.

"Gongtui Gongxuan" (Public Recommendation and Public Election)

Nanbu County in Sichuan Province decided to use "public recommendation and public election" to elect 178 deputy township heads in 79 towns in Nanbu County during the period between October and 27 December 1998. The county CPC Committee adopted "Methods for Candidates' Competition in Public Recommendation and Public Election", stipulating the requirements, conditions and specific procedures for participation in the competition. Before the formal election of township people's congresses, 1,057 people registered to participate in the election either through nomination by the CPC Committees, or through nomination by ordinary citizens, or through self-nomination. After examination by the county CPC Committee, 689 people had satisfied the basic requirements and became preliminary candidates. They made public campaign speeches and answered questions before the evaluation panel consisting of heads of the county CPC Committee, county government, county people's congress, and county people's political consultative committee. The topics for them to address and questions for them to answer were chosen from 500 topics and 3,000 questions prepared by the organisation department of the county CPC Committee. In addition, every preliminary candidate had to answer three questions from the panel and deputies to township people's congresses. Their performance was evaluated and marked by panel members and deputies to township people's congresses. For each position, the preliminary candidate who got the highest votes became a formal candidate. Ten or more deputies to a township people's congress chose another formal candidate from the remaining preliminary candidates. Then all deputies to a township people's congress cast their votes and the candidate who got more votes became deputy township head. The result was announced immediately after the election. In the whole county, a total of 175 persons became deputy township heads through this method, out of whom 46 were previously deputy township heads, 51 were previously officials of governmental organs, 15 previously held managerial posts in institutions, 12 had been teachers, 36 had been employees of institutions, 7 were officials employed previously by county or municipal governments, 4 were previously management staff in enterprises, and 4 were previously village CPC secretaries. Ten candidates who were previously deputy township heads lost in the

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

election¹⁴⁸. This model does not deny the nomination right of deputies of township people's congresses and only restricts that right by allowing them to nominate one candidate only. Although this model is better than those models already discussed above, strictly speaking, this model still restricts the nomination right of deputies to township people's congresses.

In the second half of 2003, the organisation department of the Jiangsu Provincial CPC Committee used the "public recommendation and public election" method in the selection of county head and mayor for the first time in China. The procedure was as follows. On 17 October the arrangement was announced by the secretary of the Changzhou Municipal CPC Committee. Three days were given for registration. When the registration period was over on 20 October, the organisation department of the Changzhou Municipal CPC Committee reviewed the qualifications of those who had registered¹⁴⁹. Then it was up to more than 1,000 officials at deputy county head level or above to cast the first round of votes on those registered candidates. More than 60 officials at deputy mayor level or above cast the second round of votes to select seven candidates, out of 59 who had survived the first round. They were the first batch of mayoral candidates through "public recommendation and public election" in China¹⁵⁰. On 1 November, the seven candidates formally went to Jintan City to prepare their research reports on Jintan. Seven days later, they were invited to give their campaign speeches and answer questions, and be evaluated by experts and ordinary citizens. On that basis, three candidates were chosen out of the seven as preliminary candidates. On 11 November, the organisation department of the Jiangsu Provincial CPC Committee conducted an examination of the three preliminary candidates. On 23 November, Changzhou Municipal CPC Committee held its meeting to decide through secret ballot one mayoral candidate, and Wu Xiao-dong was selected. On 17 December, the Standing Committee of Jintan Municipal People's Congress held a meeting in which Wu Xiao-dong won the support of all deputies to become acting mayor in Jintan City¹⁵¹. In this model, the nomination right of the Standing Committee of Jintan Municipal People's Congress was denied. It is therefore also possible to argue that this model has gone beyond the limits of existing legal norms for elections.

"Xinren Toupiao" (Vote of Confidence)

Before the election for the change of term of the township people's government in Zhuoli Town, Linli County, Shanxi Province, a vote of confidence was held between 1st and 18th April 1999 for all voters in the town to express confidence, basic confidence, or no confidence in the heads of the township CPC Committee, the government and the people's congress. The organiser of the voting, Linyi County CPC Committee, adopted the "Implementation Plan for the Survey of Public Confidence in Main Officials in Zhuoli Town" ("the Implementation Plan"). The Implementation Plan stipulated that if an official received over 50% no confidence votes, he could not be a candidate for the same position next time; if he got more than 40% no confidence votes, the CPC Committee at the next level above would send a person to, give

¹⁴⁸ See Organisation Department of Nanbu County CPC Committee in Sichuan Province, "Sichuan Sheng Nanbu Xian Gongtui Gongxuan Fuxiangzhengzhang Ziliao Huibian" (Collection of Materials on Public Recommendation and Public Election of Deputy Heads to Township People's Governments in Nanbu County in Sichuan Province); see also Liu Xi-tang, "Guanyu Xiangji Minzhu Fazhan de Diaocha yu Sikao" (Investigation and Study of Democratic Development at Township Level), in "Jinji Shehui Tizhi Bijiao" (Comparison of Economic and Social Systems), vol. 2, 2000; quoted from Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei and Yang Long-fang, n. 131.

¹⁴⁹ According to the official in charge of the registration office of personnel evaluation and recommendation in Changzhou City, the conditions for the candidates of public recommendation and election, as laid down by the organisation department of the Provincial CPC Committee, are very strict. A candidate must be under 45 years old, with a bachelor's degree or above, be an official at county level (*chuj*), and have had more than two years of working experience at the relevant level. For details, see: <http://www.urbanstudy.com.cn/culture0007/index.asp>.

¹⁵⁰ See <http://www.urbanstudy.com.cn/culture0007/index.asp>.

¹⁵¹ *Ibid.*

him advice and a warning; if he got more than 30% no confidence votes, the organisation department of the CPC Committee at the next level above would get more information about him and help him to improve his work performance; if he got less than 15% no confidence votes, the county CPC Committee would issue a circular to commend him. Before holding the vote of confidence, at both village and township levels, relevant laws were broadly explained to the general public. Some basic information as well as the achievements of the three persons in the last three years were also widely disseminated. One open meeting was held for the three persons to report what they had done to the public. After the meeting, their basic information and the main contents of their reports delivered at the meeting were distributed to all groups of village residents for discussion and comments. Thereafter, on 18th April, 17 ballot stations were established where all voters including village residents, officials, and workers could cast their votes on the three persons. Meanwhile, an election was held for the change of term of the township people's congress. The result was that all three persons got more than 90% of votes of confidence and/or basic confidence¹⁵². Since under this model those who got less than 50% votes of confidence and/or basic confidence couldn't be candidates for heads of the township CPC Committee, people's government, and people's congress, this may conflict with the nomination rights of the deputies to the township people's government.

(c) Analysis and Comments

The appearance of seven different models for the election of officials of local people's governments indicates that some local governments have, with the support of local CPC Committees, started experimental reforms of election of heads of local people's governments in order to find an election model which is most suitable for China's democratic development. What should first be discussed is the reason behind all these experimental reforms. One scholar who was directly involved in the planning of direct elections in Buyun Town has pointed out that one of the reasons is that many officials of local people's governments wanted their towns to be the first to start political system reform in China¹⁵³. All the seven cases discussed above are regarded as the first in one or another aspect. That scholar has argued that this motivation to become China's first in election reform may become an important factor helping to break through obstacles to political reform¹⁵⁴. Though this possibility can't be excluded, if what he has suggested is the real or main reason for local governmental officials to initiate political reforms, then what those local officials cared for is not really the democratic progress of the electoral system, and it will be doubtful whether the effect of their reforms will last.

Secondly, only one out of the seven models, i.e. "direct nomination and election" tried in Mianyang, Sichuan Province, is in full compliance with existing legal norms for election. The other six models have more or less gone beyond the limits of existing Election Law. During the author's investigation in X Town in Qingxin County, Guangdong Province, some deputies to the people's congress expressed the view that it was better to let voters to directly elect

¹⁵² On the election day, 9,240 voters in total participated in the confidence vote, which is 97.8% of registered voters in Zhuoli Town. The secretary of the CPC Committee, Sun Jian-guo, got 8,318 votes of confidence, and 530 votes of basic confidence; the township head, Zhang Ya-nu, got 8,209 votes of confidence, and 660 votes of basic confidence; the chairman of the township people's congress got 8,147 votes of confidence and 623 votes of basic confidence. For details, see "Linyi Xianwei dui Zhuoli Zhen Zhugan jinxing minyi diaocha Huodong Ziliao" (Materials on Investigation of Public Confidence in Main Officials in Zhuoli Town held by Linyi County); see also Niu Weihong, "Xiangji Minzhu Jianshe de Xin Tuopo – dui Liangpiaozhi Xuanju Xiangzhen Zhuyao Lingdao de Sikao" (New Breakthrough in the Development of Democracy at Township level – Thoughts on the Election of Main Leaders in Township Governments through Two Rounds of Ballots), in "Gaige Neican" (Internal Reference Materials on Reform) (Beijing), vol. 16, 1999; quoted from Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹⁵³ See Li Fan, n. 10, pp. 196, 220-222.

¹⁵⁴ See Li Fan, n. 10, p. 222.

the township head because it would be more democratic. However, one newly elected village head in X town believed it would be better to let deputies to the people's congress elect the township head. His reason was that most village residents did not know the candidates at all while deputies to the township people's congress had more contact with the township government and more chance to meet the candidates, so they would know the candidates better. Furthermore, the candidates for township head were determined by the CPC Committee rather than being nominated by voters¹⁵⁵. Thus there exist different views on whether or not the existing electoral system for heads of local governments is appropriate.

One issue caused by the six models of election reform is whether or not the electoral system for heads of local people's governments will only have its future if one violates the existing statutory rules, even the Constitution. According to the provisions of the 1982 Constitution and Election Law, officials of all governmental organs will be elected by the people's congress at the same level. Hence, the heads of governmental organs are all indirectly elected, and will have similar disadvantages/problems to those of indirect elections of people's congresses. But this is determined by the nature of the people's congress system, which is in essence a parliamentary system. One essential characteristic of a parliamentary system is that parliament will organise the government. So long as China has no intention to make any substantial amendment to the people's congress system, it will then be unavoidable that officials of governmental organs at one level will be indirectly elected by the people's congress at the same level.

Some scholars specialising in political science are of the view that it is possible to violate the provisions for elections in the Constitution and Election Law and Chinese society should adopt an understanding and appreciative attitude to such experimental reform¹⁵⁶. As a legal scholar, the author holds the view that any improvement of the current electoral system should first be considered within the framework of the existing Constitution and other relevant legal norms. If it is proved that the existing electoral system does constitute an obstacle to democratic election, it should be amended first before an election is held. Every reform to be undertaken must be carried out lawfully. The "direct nomination and election" model tried in Mianyang in Sichuan Province proves that it is possible under the current system that the election of heads of local people's governments can not only be consistent with the people's congress system, but also be democratic.

The six models which have gone beyond the limits of existing legal norms have in substance violated the people's congress system, which is a parliamentary system. It is not the view of the author of this paper that the people's congress system should not or need not be reformed. On the contrary, the author holds the view that changes should be made to many aspects of the people's congress system. But the CPC has in all formal documents insisted clearly on the people's congress system. It is therefore foreseeable in the near future that the nature of the people's congress system, i.e. the nature of a parliamentary system, will not change. Hence, the author is of the view that any proposals to amend the people's congress system should not deviate from the fundamentals of a parliamentary system. In the direct election process in Buyun Town, the deputies to the people's congress only clapped their hands to show their acceptance of the candidate who had won the direct election and to confirm the validity of the direct election. The role of the people's congress was rather symbolic. That is why some scholars have challenged the constitutionality of the direct election of township heads as the Constitution and Organic Law on LPCG stipulate clearly that a township head should be elected by the township people's congress, rather than be directly elected by voters. The Legal Daily in China published a front page article on 19th

¹⁵⁵ This is the finding of the author in his investigation in Guangdong.

¹⁵⁶ See Li Fan, n. 10, p. 220.

January 1999 to argue that the direct election held in Buyun Town was unlawful and unconstitutional¹⁵⁷. Later on, the Central Committee of the CPC also issued a document, stating that no further direct elections should be held. That is why in the 2001 election in Buyun Town, only one formal candidate for township head was directly elected by voters and that candidate was put to the township people's congress to be elected as township head¹⁵⁸.

Though the other five models have also gone beyond the limits of existing legal rules, they only violate the exercise of nomination rights, and do not deny the people's congress its final authority to choose the township head or county head. Hence, they have received implied consent from the CPC. Out of those five models, "public recommendation and competition", "public recommendation and public election", and "haixuan" could have two problems. One is how to ensure that the nomination process for formal candidates is lawful, fair and just. This is because in the nomination process, CPC Committees, other governmental organs, and individuals all have the right to recommend candidates. The issue is how to choose the formal candidates out of all the candidates nominated through different channels. Once the formal candidates are decided, the second issue is how to put forward these candidates to the people's congress in compliance with the Constitution and other laws without restricting the authority of the people's congress and giving the public the impression that the people's congress is only a rubber stamp. This is also a thorny issue. Strictly according to the theory of the people's congress system, only the presidium of the people's congress at the same level has the authority to decide formal candidates. But in "mass recommendation and competition" tried in Jiangjiashan Town, "public recommendation and public election" tried in Nanbu County and Changzhou City, and "haixuan" tried in QiQiHaEr City, preliminary candidates were all selected by other organisations and later submitted to the presidium for confirmation. These models' disadvantages include: (1) the legality of the procedure to select preliminary candidates is doubtful; (2) the presidium has become a rubber stamp and does not really exercise the authority granted to it by the Constitution and other laws. Their advantage is that it is certain that all preliminary candidates will have strong public support.

Another issue worthy of attention and discussion arising from the seven models is the role of the CPC Committees in elections. Quite obviously, local CPC Committees play significant roles in six out of the seven models with the exception of the "direct nomination and election" model. This is consistent with the long-term policy of the CPC, i.e. the CPC is responsible for the administration of officials. Firstly in the process of deciding preliminary candidates, the CPC Committees have already played a positive role. Secondly, the presidium of a people's congress is usually controlled by the local CPC Committee. Hence, in fact, it can be said that the CPC Committees are in actual control of the nomination of formal candidates. Since the Decision of the 4th Plenum of the 16th National Assembly of the CPC has emphasised the need to strengthen the governance capacity of the CPC, it seems unrealistic to demand the adoption of a multi-party system in China. On the other hand, however, the CPC has also emphasised the need to have socialist rule of law in China. Furthermore, implementation of rule of law and protection of human rights have been incorporated into the Constitution through the 2004 Amendments. Hence, the top level of the CPC wants everything done by the CPC to be consistent with the rule of law principle and protection of human rights principle. The common understanding of Chinese scholars is that rule of law means first constitutionalism, i.e. to rule the country according to the Constitution. The author is not of the view that the CPC should not play any role in the procedure for nomination of preliminary candidates for officials of local governmental organs. What it should do is to get involved through constitutional and lawful means. That is to say, the CPC should operate within the framework of the Constitution, rather than outside the constitutional structure.

¹⁵⁷ See Zha Qing-jiu, n. 9.

¹⁵⁸ See Li Fan, n. 10, see in particular n. 1 on p. 236 of that book.

Nobody is saying that the CPC Committees did not get involved in the “direct nomination and election” model tried by Mianyang City in Sichuan Province. But so long as the participation of the CPC is in compliance with the Constitution and the laws, it is worthy of recommendation and study. Some scholars have expressed the view that the Mianyang model “has made full use of the nomination right granted to voters and people’s deputies by the Constitution and Election Law, and has violated the existing conventions on real political operation, i.e. nomination of candidates, and has given up the control of the CPC over voters and the selection of candidates. In so doing, it has not only enhanced the democracy of the township head election, but also moved a step towards strengthening and improving the people’s congress system”¹⁵⁹. In reality, however, it was quite obvious that Mianyang City had some control over the election. For example, it has been reported that in the election process candidates were not allowed to campaign for votes. Hence some scholars have expressed the view that this has limited the participation of ordinary voters in the election and therefore the whole election process is much less competitive¹⁶⁰. The real intention behind the prohibition on campaigning for votes is most likely that the local CPC Committee wanted to control the end result of the election.

From the previous discussion of the principle that the CPC will be responsible for the administration of officials, we know that it means the CPC enjoys authority over the appointment of officials. Under the people’s congress system, however, the people’s congress should enjoy the authority to appoint officials of local governmental organs. So there may be an irreconcilable conflict between the principle and the people’s congress system. It is therefore necessary to modify either one of the two or both of them so as to remove the conflict.

The specific suggestions of the author are as follows. Firstly, as the principle that the CPC is responsible for administration of officials is unchallengeable, what can be considered is to maintain the CPC’s authority to nominate preliminary candidates for official posts to local people’s congresses, but not the authority of final decision on such appointments. Secondly, the right of the deputies to a people’s congress to nominate candidates can be maintained if the first suggestion is adopted. Alternatively, and perhaps preferably, is that such nomination right can be repealed and handed back to voters as already tried in some of the models. If this suggestion is followed, the relevant provisions in the Constitution and Organic Law on LPCG will have to be amended. Thirdly, it is appropriate to amend the Organic Law on LPCG by stipulating that pre-elections will be held for voters to elect formal candidates from all preliminary candidates according to the maximum statutory number allowed under the Organic Law on LPCG. Fourthly, all the formal candidates selected through pre-election can then be submitted to the people’s congress for it to elect officials to local people’s governments.

What then will be the future for the electoral system of officials in local people’s governments? With this question in mind, the author conducted field study in June 2005 in two places in Guangdong Province (Qingxin County and Y Town in Dongguan City). The author found that no reform of the existing electoral system has been undertaken or planned in those two places. One official from the Standing Committee of Qingxin County People’s Congress expressed the view that any reform to the electoral system should be carried out according to the principle of gradual and orderly progress. The author believes the election of officials to most local governments in China is the same as that in the two places the author has visited. That means they still follow the traditional method to elect officials to local governmental organs. Local CPC Committees are still basically in control of appointment of

¹⁵⁹ See Huang Wei-ping, Zhou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹⁶⁰ Ibid.

officials to local governmental organs. Though some experimental reforms of the election of township and county heads have appeared in China, these cases won't affect the broad picture as mentioned above. That means in the near future, the traditional election method will still be widely used in China. Under such circumstances, China should start with democracy within the CPC and select officials according to the Regulations. Once that is achieved, China can further consider democratic election of officials to local governmental organs.

5. The Electoral System of the CPC and Its Reform

It is not difficult to notice from the discussion in the previous three parts that the CPC has an important role to play in these electoral systems, especially the last two. The principle that the CPC will be responsible for the selection and administration of governmental officials determines that the CPC has direct influence in not only the selection of candidates for governmental officials but also the actual appointment of those officials. If the CPC organs do not function democratically, the candidates for governmental officials recommended by them won't be the result of a democratic system. That is to say, the degree of democracy within the CPC will directly influence the degree of democracy of the election results of deputies to the people's congresses and governmental officials. It is, therefore, necessary to discuss the electoral system within the CPC and its reform.

According to the Charter of the CPC as amended in 2002, the electoral system of the CPC can be summarised as follows. The highest organ of power within the CPC is its national congress and the Central Committee elected by the national congress. The CPC's organs of power at local levels are its local congresses and the committees elected by such local congresses. A CPC Committee will be accountable to and report to the CPC's congress at the corresponding level¹⁶¹. The CPC's organs of power at all levels should be formed through election¹⁶². Hence, the electoral system within the CPC includes the election of deputies to the CPC congresses and the election of the Central Committee and various local committees. Both the deputies to all CPC congresses and the Central Committee as well as various local committees must be elected through secret ballot. The list of candidates will be formed through consultation between the CPC organs and their members. Elections can be held either directly if the number of candidates is more than the positions available or after a formal list of candidates is formed through a pre-election¹⁶³. At central level, all members of the Central Committee will elect the members of the Central Political Bureau, members of the Standing Committee of the Central Political Bureau, as well as the Secretary-General of the Central Committee who must be a member of the Standing Committee of the Central Political Bureau¹⁶⁴. At local levels, all members of a CPC Committee shall elect its head, deputy heads as well as its standing committee. The election results must be approved by the CPC Committee at the next level above¹⁶⁵. At the grassroots level, the CPC will establish its grassroots CPC organs which will be elected either by all CPC members or by their deputies¹⁶⁶. Similarly, the head and deputy heads elected by either all CPC members or their deputies should also be approved by the CPC Committee at the next level above¹⁶⁷.

¹⁶¹ See para. 3 of Art. 10 of the Charter of the CPC.

¹⁶² See para. 2 of Art. 10 of the Charter of the CPC.

¹⁶³ See para. 1 of Art. 11 of the Charter of the CPC.

¹⁶⁴ See para. 1 of Art. 22 of the Charter of the CPC.

¹⁶⁵ See Art. 27 of the Charter of the CPC. According to the same Article, the standing committee of a CPC local committee will exercise the authority of that local committee while the latter is not in session; the standing committee will continue to be in charge of routine work when the next local CPC congress is in session until a new standing committee is elected.

¹⁶⁶ See para. 2 of Art. 29 of the Charter of the CPC.

¹⁶⁷ See Art. 30 of the Charter of the CPC.

One can see from the above provisions that the design of the electoral system within the CPC is very similar to the electoral system of the people's congresses, including the pre-election of candidates. From the discussion in Part three of this paper, we know that the election will often become one in which the number of candidates will be equal to the number of positions available if a pre-election is held¹⁶⁸. One essential difference between the electoral system of the CPC and that of the people's congresses is that the election results with regard to the head and deputy heads of a grassroots CPC organ or a CPC Committee won't be effective until they are approved by the CPC Committee at the next level above. This indicates that the CPC Committee at the next level above enjoys veto power over the election results below and the relationship between the CPC organs at different levels is that of a leader and one who is led.

It was reported in 2003 that President Hu Jin-tao had already put democracy within the CPC on the agenda¹⁶⁹. It has also been reported recently by foreign media that all CPC Committees at township levels in Sichuan Province have been required to have their heads democratically elected. That report notes that the CPC is undertaking electoral reform within the CPC, of which the intention seems to design China's one party democracy in order to avoid the fate that its one party system will finally be discarded¹⁷⁰. In fact, the CPC started in the end of the 1980s a number of experiments with electoral reform within the CPC at different localities in China¹⁷¹.

The first is the reform of the CPC congresses, which has two specific aspects. One is the experiment of standing CPC congresses. The CPC started its experiment in 1998 in twelve different counties/cities in five provinces, starting with Shujiang District in Taizhou City of Zhejiang Province¹⁷². The essence of the reform is to change the deputies to a CPC congress to standing deputies, meaning that they are always available, so that a congress can be held once a year¹⁷³. The other is reform of the election of deputies. One fundamental reform is to allow all CPC members to directly elect their deputies. The direct election of deputies to a CPC congress at county level in Ya An City of Sichuan Province in December 2002 is believed to be the first of its kind in China¹⁷⁴. Related procedural reforms also include the procedure for a CPC member to nominate him/herself to compete in the election and the procedure for making campaign speeches¹⁷⁵. Other experiments relating to the election of deputies include: (1) the reduction of quota for deputies, which usually amounts to a more than 20% decrease in the number of deputies; (2) making the election units smaller so that CPC members within an election unit will have a better understanding of and supervision over the candidates; (3) the number of candidates has been increased to 40% more than the number of deputies to be elected¹⁷⁶. Comments on these experiments have not been consistent. Some are of the view that the reform will make it possible for a CPC congress to

¹⁶⁸ See discussion in section 3.1 of this paper.

¹⁶⁹ See Hong Kong Ta Kung Pao: "Dangnei Minzhu Gaig Baishang Yishi Richeng" (Democracy within the CPC is on the Agenda), <http://www.gmw.cn/03pindao/guancha/2003-06/030611/030611-12.htm>.

¹⁷⁰ See Benjamin Robertson and Wang Bo-yong, "China Tackles 'threat' of voting spreading, Scotland on Sunday, 18 September 2005, at <http://www.scotsman.com/?id=1955902005>.

¹⁷¹ See Chapter 8 of the White Paper.

¹⁷² See Li Zhi-hong, "Guanyu Dang Daibiao Dahui Changrenzhi Shidian Gongzuo de Diaocha" (Investigation of the Experiments with the Standing System of Deputies to the CPC Congresses), in "Dangjian Yanjiu Neichan" (Study of the CPC Development for Internal Reference), vol. 2, 2003, at: <http://www.djyj.com.cn/share/viewdjyjnc.asp?id=477>.

¹⁷³ Ibid.

¹⁷⁴ See "Jihuo Dangnei Gaige Shidian, Sichuan Cheng Zhongguo Zhengzhi Gaige Shiyantian" (To Activate Reform within the CPC, Sichuan Has Become the Experimental Field for China's Political Reform), 9 June 2005, 11:05, from Fenghuangwang (Phoenix Net): <http://news.memail.net/050609/120.2.1525872.00.shtml>.

¹⁷⁵ Ibid.

¹⁷⁶ See n. 172.

play its role and contribute to democracy within the CPC. Others are of view that the cost for such reform is too high and the reform may well affect the efficiency of decision-making within the CPC¹⁷⁷.

The second reform is of the election of a CPC organ in a village. As early as 1997, one county in Shenyang City of Liaoning Province had, with the approval of the Organisation Department of the Central Committee of the CPC, experimented with the direct election of the head of a CPC organ in a village by all CPC members in that village¹⁷⁸. Thereafter, election reform of CPC organs in villages has been tested in different localities in China. In 2000, the Central Committee of the CPC actively promoted the reform of the selection and appointment system of members of CPC organs in villages¹⁷⁹. Reform has picked up pace since then and three different models have appeared. The first is called "two recommendations and one election", meaning recommendation by both the masses and CPC members in a village and then election by all CPC members¹⁸⁰. The second is called "two votes system", meaning that it will be up to the masses to cast a vote of confidence, and then all CPC members will formally cast their votes. The purpose of the "two votes system" is to win the support of villagers for a village CPC organ¹⁸¹. The third is called "direct election after public recommendation", meaning that the CPC members and the masses will openly pre-elect candidates for the head of a village CPC organ and then an election will be held¹⁸². The essence of all three models is that the election of a village CPC organ is no longer regarded as an internal matter within the CPC. Instead, members of a village CPC organ need to get the support of not only the CPC members of that village but also the majority of the villagers (who are non-CPC members). Though the election will ultimately be held among CPC members, villagers who are non-CPC members and constitute the majority of residents in the village will almost determine the election results¹⁸³.

The third reform is of the election of township CPC Committees as well as of township and county CPC Committees themselves. The township CPC Committee election reform has mainly been about the direct election of the head of a township CPC Committee. Since Mu Lan Town in Xin Du District of Chengdu City, Sichuan Province had the head of its township CPC Committee directly elected through "direct election after public recommendation" on 7 December 2003¹⁸⁴, some local CPC Committees in other provinces have also started or are

¹⁷⁷ See n. 172.

¹⁷⁸ See Yang Hai-feng etc, "Shencheng Xiangzhen Dangwei Gaixuan Huanjie, Shixing Dang Daibiao Zhijie Xuanju Fangshi (Election for the Change of Term of the CPC Committees at Township Level in Shenyang City, the Experiment of Direct Election by Deputies to the CPC Congress at Township Level), in "Huashang Chengbao"(Huanshang Morning Post), at:

<http://www.nen.com.cn/77970767572107264/20050830/1749500.shtml>.

¹⁷⁹ Ibid.

¹⁸⁰ See "Shangdong Shixing Cun Dangzhibu Zhijie Xuanju Qude Shixiao" (The Trial of Direct Election of Village CPC Organ in Shangdong Province Has Achieved Good Results), in Dongfang Wang (Dongfang Net), at: <http://www.siica.org.cn/eastday/node4796/node12163/node12166/node12183/userobject1ai731890.html>.

¹⁸¹ See Xu Yong, "Chongjian Zhengzhi Xinren de Youye Tansuo – Du "Xiangcun Xuanju zhong de Liangpiao Zhi" (Good Experiment in Re-establishing Political Confidence: Reading "Two Votes System in Village Election") at: <http://www.weiquan.org.cn/data/detail.php?id=3463>

¹⁸² See n. 174; see also "Gongtui Zhixuan de Xianshi Yiyi – Fenghua Shi Nongcun Dangzuzhi Xuanju Zhidu Gaige de Sikao" (The Practical Meaning of Direct Election after Public Recommendation – Reflection on the Reform of the Election System of Village CPC Organs in Fenghua City), at: <http://www.zjol.com.cn>.

¹⁸³ See "Shangdong: Wuqian Duoguo Cun shixing Zhixuan Zhishu" (Shangdong: Direct Election of the Heads of Village CPC Organs in More than 5,000 Villages), at: http://news.xinhuanet.com/mrdx/2005-09/26/content_3544135.htm

¹⁸⁴ See "Chengdu Kai Quanguo Xianhe, 639 Ming Dangyuan Zhixuan Chu Zhen Dangwei Shuji" (Chengdu Leads the Nation: 639 CPC Members directly Elected the Head of the CPC Committee in a Town), at: <http://www.chinaelections.org/readnews.asp?newsid={C8F5F99A-D7E1-4A18-B496-52920FBFBAE7}>.

going to start similar election reform¹⁸⁵. The focus of township and/or county CPC Committee reform has been on whether or not to retain the standing committees of township and/or county CPC Committees. Luotian County in Hubei Province abolished in 2005 the standing committee of its county CPC Committee with a history of 47 years, and its functions have been assumed by the CPC Committee elected by all deputies to the county CPC congress¹⁸⁶. It has been commented that after the reform, the actual source of power of the CPC organ at county level has changed fundamentally from CPC Committee at the next level above to the deputies to the county CPC congress¹⁸⁷.

It should be noted that the last two reforms are inconsistent with the relevant provisions of the Charter of the CPC. Despite that, all three kinds of experimental reforms within the CPC have the endorsement of the Organisation Department of the Central Committee of the CPC. This demonstrates that the top level officials within the CPC take the position that it is necessary to have electoral reform within the CPC. What is then the objective of such reform? The answer can be seen in a speech delivered by the Secretary-General of the Central Committee of the CPC, Hu Jin-tao, in April 2005. He points out in his speech that "it is necessary to insist on and promote democracy within the CPC and to rely on the masses. Democracy within the CPC is the life of the CPC . . ." ¹⁸⁸. That is to say, the existence of democracy within the CPC is regarded as an issue relating to the future and survival of the CPC. One essential element of democracy within the CPC is the democratic election system. The White Paper has made positive comments on the experimental reforms with regard to the CPC congresses, local CPC Committees, and election systems within the CPC, and states that the difference between the number of candidates for deputies to CPC congresses and the number of deputies should be increased appropriately, and that the scope for direct election of officials of grassroots CPC organs should gradually be expanded¹⁸⁹. Meanwhile, the White Paper has also noted that "it is an important content of democratic governance of the CPC to rely on the development of democracy within the CPC to promote people's democracy"¹⁹⁰. It is therefore quite clear that the objective of election reform within the CPC is to gradually expand democracy within the CPC, including the democratisation of elections.

6. Analysis of Election Problems and the Future of China's Electoral System

It can be seen from the previous discussion of the three kinds of electoral systems in China that all of them are under reform and there are many questions worthy of further in-depth study.

Many Chinese and foreign scholars have undertaken in-depth research of various issues relating to the Chinese electoral system, especially the design of election rules and processes. In this part of the paper, based on the above discussion of the three electoral

¹⁸⁵ See n. 174; see also "Sihong Shiyuan: 1.4 Wan Dangyuan Zhixuan Xiangzhen Dangwei" (Sihong Experiment: 14,000 CPC Members directly Elect the CPC Committees at Township Level); at: <http://www.chinaelections.org/readnews.asp?newsid={01BE8DED-934C-42AD-945E-9EA66B43E042}>, see also n. 178.

¹⁸⁶ See "Dangnei Minzhu Gaige Zhongda Cuoshi: Xianwei Wu Changwei" (An Important Step in Democratic Reform within the CPC: No More Standing Committee of a County CPC Congress), at: http://www.qzwb.com/gb/content/2005-06/05/content_1671372.htm

¹⁸⁷ Ibid.

¹⁸⁸ See Hu Jin-tao's speech delivered in Shangdong in April 2005, at: http://210.31.67.98/vjs/home/bx/bx_study_hsd.htm.

¹⁸⁹ See Chapter 8 of the White Paper. It actually means that the CPC wants to develop democracy within the CPC first and hope that democracy within the CPC will naturally promote democracy in the society nationwide. That has been regarded as the policy for achieving democratic governance by the CPC.

¹⁹⁰ Ibid.

systems, the author will further discuss three questions on which either not much in-depth research has been undertaken or the author holds some different views.

6.1 CPC Organs, Administrative Organs and Election

Among all the electoral system issues, the relationship between the CPC organs and administrative organs, and the role of the CPC in elections are both important and sensitive issues. One can see from above discussion of the three electoral systems that these two issues have appeared in all three electoral systems, and more prominently in village election and governmental officials' election.

6.1.1 CPC Organs and Administrative Organs

From a macro perspective, the relationship between CPC organs and administrative organs is what we usually call the relationship between the CPC and government. At the lowest level, i.e. the village level, it is about the relationship between the secretary of a village CPC organisation and the head of a village residents' committee. Strictly speaking, this is not an election law issue, but one more appropriate for constitutional law and political science. Given that village elections are provided for by the 1998 Organic Law, which contains provisions on the relationship between a rural CPC organ and a village residents' committee, and that this issue has a direct bearing on the election and operation of a village residents' committee, it is necessary to further elaborate on this issue.

The practice in Guangdong Province is to encourage CPC members to participate in the election of a village head. If the elected village head is a CPC member, he can be appointed secretary of the village CPC organisation so as to avoid potential conflict between a village CPC head and village head. In Qingxin County, the author found that in one village, the newly elected village head is not a CPC member while the candidate favoured by the township government, who is a CPC member, lost the election. The X Town CPC Committee decided to send one CPC member from X Town CPC Committee to that village. After X Town CPC officials talked to 68 CPC members in that village, the CPC member sent from X Town CPC committee was successfully elected as secretary of the village CPC organisation.

This is a method to avoid potential conflict, but not one to resolve a conflict. Due to the fact that the new secretary was sent to the village by the town CPC Committee, the election by the CPC members in that village was only symbolic and would give outsiders the impression that there was no democracy within the CPC. This method is, however, consistent with the CPC's policy on the relationship between the CPC and government. In comparison with the situation in the late 1980s, what is different now is that the CPC no longer emphasises the need to separate the CPC from the government. Instead, the CPC has emphasised the need to strengthen the leadership of the CPC at all levels of government. What has actually been done is to arrange for the secretary of the CPC Committee to hold the position of chairman of the standing committee of the people's congress at the same level. In so doing, it is expected that the CPC can strengthen its leadership over governmental organs.

What should be done if a village head and village CPC head are two different persons and conflict does arise between the two? One newly elected village head in Qingxin County was of the view that advice should be sought from the X Township CPC Committee and government. That view indicates the newly elected village head does not have a good understanding of his statutory authorities and obligations. Nor does he know much about what should be the relationship between him and the village CPC head. This is a common problem existing in rural areas in China. In the author's investigation in Y Town in Dongguan City, one governmental official expressed the view that the secretary of the CPC organisation

should have the final say if there is a conflict between him and the village head. But he added that if the conflict was really irreconcilable and the village head refused to listen to the secretary of the CPC organisation, what should be done was to remove the secretary of the CPC organisation and that was the usual practice in Dongguan. This is because a village head can only be removed from his position through normal legal procedure, i.e. removal procedure, which is complex and difficult. But removal of a secretary of a village CPC organisation only needs a decision within the CPC organ through an internal procedure, which is much simpler and easier.

The author is of the view that careful attention should be paid to the relationship between a village CPC organisation and the village head, especially if there is a conflict between them. The CPC as the ruling political party in China should nominate a capable CPC member to compete for village headship and this CPC member should be appointed village CPC head if he is successfully elected as village head. Even if he is not so appointed, it does not really matter, because as a CPC member, he should listen to the secretary of the CPC organisation. But if that CPC member loses in the village election and a non CPC member is elected as village head, the best solution for the CPC is to persuade that person to join the CPC. If he/she does, any potential conflict between the two can be avoided. In one village of X Town in Qingxin County, the newly elected village head was not a CPC member but was persuaded to join the CPC. He has also expressed his interest in becoming a CPC member. But when an elected village head is neither a CPC member nor interested in joining the CPC, the CPC should expressly recognise and respect the authority of the village head and residents' committee, and should not interfere with the latter's exercise of its lawful authority. That is the basic requirement of rule of law. Hence, the best solution is to ensure that the authorities of a village head should not be subject to any restrictions from a village CPC head. The CPC should require its village organ to exercise self-restraint by not interfering with the exercise of authority by village residents' committee.

The same reasoning applies to the relationship between the CPC and governments at township and county levels. The only difference is that at township and county levels, the relationship is between the CPC Committees on the one side and governmental organs within the constitutional structure on the other. So if the relationship is not handled properly, the ruling position of the CPC may be directly affected. In fact, the CPC wishes to strengthen its control of the people's congresses so as to achieve the objective of having control of other governmental organs through people's congresses. There is no problem with this approach in theory, because in any country adopting a parliamentary system, the ruling party is in control of the parliament and all governmental organs. The real issue is how the CPC controls people's congresses. The author's view is that the CPC should try to control people's congresses through means which are lawful and constitutional. Specifically speaking, it should do so through its members within people's congresses, rather than any other means outside the constitutional structure.

6.1.2 The Role of CPC Organs in Elections

It is not difficult to see from the discussion of the three kinds of electoral systems above that the CPC organs are in fact in control of all three kinds of electoral systems, from setting down conditions for candidates to the operation of the whole election process. That means the reform of China's electoral systems and their future entirely depend on the CPC's intention to reform and its decision on reform. But the decision of the CPC cannot depart completely from the wishes of the public. That is possibly why the CPC has already started to practice democracy within its organs. The CPC must have realised that it is almost certain that China will develop democracy. The only issue is when it will do so. Hence, the author is optimistic about the future of democratic development in China.

Under present circumstances, as far as the role of the CPC organs in elections is concerned, the author is of the view that reform should be undertaken in the following aspects. Firstly, the CPC as the ruling political party is in control of people's congresses at all levels. It should therefore be able to play a significant role in the enactment of formative rules on elections. Specifically, the CPC's control of the people's congresses actually means it controls to a certain extent the progress of democratic development in China. But in the long run, it is impossible for the CPC to prevent the development of democracy. Hence, it is better for the CPC to listen to the wishes of the people and enact a set of rules on elections which are fair and just and in compliance with the principle of democracy. As far as existing election rules are concerned, those for village elections are acceptable. But those for election of deputies to people's congresses and of officials to governmental organs still have a lot of room for further improvement. Secondly, in every aspect of the operation of the electoral systems, the CPC organs have in fact control of the election committees and the presidiums of the people's congresses, which ensure the CPC's control of the nomination and determination of formal candidates. The electoral system is, however, part of a country's constitutional system. Once election rules are laid down, the operation of the electoral system, as part of the constitutional system, should not be under the control of the CPC. Instead, it should be operated by an organ which is independent of the CPC and all other political parties so as to ensure the operation is fair and just. That is also the common practice in most countries in the world and one of the key factors which can ensure the electoral system to operate lawfully. If the CPC decides to give up its control of the operation of electoral system, it will be a short step to genuine democratic elections in China. Hence, the CPC organs should take the initiative to maintain a distance from election organisers. Thirdly, the CPC should make a good effort in putting forward its best candidates in elections and make full use of the CPC organisation network and its advantages to help those candidates it has nominated to be successfully elected, rather than using any means to impose pressure on or exclude other candidates standing for election to achieve its objective.

6.2 Village Elections, Governmental Officials' Elections, and People's Congresses' Elections

Many scholars are of the view that direct election of a village residents' committee would promote democratic progress in China, including direct election of a township head¹⁹¹. The author feels there is a necessity to examine the interaction among the three kinds of electoral systems in China, which will contribute to the discussion and analysis of the future of electoral system reform in China.

As far as the relationship between village election and governmental officials' election is concerned, the experience of village elections will no doubt enhance the experience of voters in other elections and also the voters' appreciation of their rights. From this aspect, the election experience of village residents' committees will be beneficial to the election of officials to governmental organs. It will assist especially the election of officials to grassroots governmental organs. As for the influence and impact of village election experience upon election of officials to governmental organs, the author is not as optimistic as some other scholars for the following reasons. Firstly, a village residents' committee is in nature completely different from a governmental organ such as a township government because their nature, functions and resources are all different. They are not really comparable. Secondly, though the CPC is very determined to introduce democratic election of village residents' committees, it is not so determined with regard to democratic election of government officials such as township heads. This is because democratic election of government officials may conflict with the principle that the CPC shall be responsible for the

¹⁹¹ See Li Fan, n. 10, pp. 198-222.

administration of officials and the ruling position of the CPC. Thirdly, the adoption of direct democratic election of government officials will change one fundamental characteristic of the people's congress system. This is because it is provided by both the Constitution and other laws that officials to governmental organs will be elected by the people's congress at the same level, rather than by voters directly. From the perspective of constitutionalism, this is directly related to whether China will adopt a parliamentary system or a presidential system. The author has not seen any signs that China will soon adopt a presidential system. If this judgment is correct, then any measure to expand direct election of officials to governmental organs will increase its conflict with the fundamental system established by the Constitution, i.e. the people's congress system, which is in nature a parliamentary system. Hence such measures will not be beneficial to the genuine implementation of a parliamentary system in China. Finally, and probably most importantly, the electoral system of officials to governmental organs may also be related to the principle that the CPC shall be responsible for the administration of officials. Hence, the influence of village elections upon the electoral system for officials to governmental organs will be very limited and there won't be much interaction between the two kinds of electoral systems.

As far as the relationship between the village electoral system and the grassroots people's congress electoral system is concerned, though a village residents' committee is in nature completely different from a grassroots people's congress, they do have one essential thing in common, i.e., both of them are directly elected by voters. Hence, the direct election experience of village residents' committees will no doubt be of direct help to and have an exemplary effect on direct election of people's congresses at township and county levels. We know from the discussion in Part three that the CPC has not expressed any clear decision about the future direction of reform of the people's congress electoral system. It still gets involved in and influences people's congress elections. This policy approach is quite different from the CPC's determination to introduce direct election of village residents' committees, and may very likely affect the degree of democracy in the election of grassroots people's congresses. However, given that direct election of grassroots people's congresses won't have a fundamental impact upon the ruling position of the CPC, the author is still optimistic to a certain extent about genuine democratic, direct election at township level. The implementation of genuine democratic, direct election of people's congresses at district/county level is a bit more complex. This is mainly because according to the principle that the CPC shall be responsible for the administration of officials, the chairmen and members of the standing committee of a district/county people's congress shall be decided by the relevant CPC Committee. But the pre-condition for those persons to become chairmen or members of the standing committee is that they must be deputies to the people's congress. In order to ensure that these people can be elected to the people's congress, the CPC Committee may use its influence. Hence, the village electoral system and grassroots people's congress electoral system may interact with and mutually influence each other.

As for the relationship between the electoral system of a grassroots people's congress and the electoral system of officials to governmental organs, due to the fact that officials to grassroots governmental organs are elected by the deputies elected through the electoral system for grassroots people's congresses, it is fair to say that there should exist a very close relationship between these two kinds of electoral systems. To a certain extent, the degree of democracy of the electoral system for grassroots people's congresses will influence and affect the degree of democracy of the electoral system for officials to governmental organs. But it may not necessarily be so primarily because the selection of officials at county level and above is decided by the organisation departments of the relevant CPC Committees.

6.3 The Future of China's Electoral System

Firstly, the author would like to discuss the future of democratic direct elections in China. Are the conditions in China in theory ready for direct election? Professor Xu Chong-de, a leading constitutional scholar in China, is of the view that it is not yet appropriate to have direct election at all levels in China. The reasons are: under current social circumstances, there are still a lot of Chinese who lack election experience and/or are illiterate. Such practical conditions have determined that if one unwisely adopted an electoral system which is perfect in form but does not work in practice in China, i.e. direct election, it would not only increase the difficulty of elections, but also restrict the rights of many people in practice. The aim of the Election Law should be to achieve democracy in substance rather than democracy in formality¹⁹². This is the view adopted by the CPC in the early years when it came into power. At present, there are still some scholars in China supporting this approach. Though this approach is still authoritative, it is certainly not the common understanding of all constitutional scholars in China. In fact, quite a few young scholars do not hold this view.

In an article entitled "Investigation of Citizens' Intellectual Quality and Election Reform"¹⁹³, Professor Cai Ding-jian conducted field study in twenty locations in China to explore whether direct election could be further expanded and whether the degree of democracy in election could be further enhanced. His conclusion is affirmative; he has concluded that it is wrong to say that China lags behind in economic and cultural development, or that Chinese people's intellectual quality is too low to have democracy. Many Chinese and foreign scholars have conducted in-depth research on the relationship between economic development and democracy, as well as the relationship between the intellectual quality of people and democratic progress in a country, and have come to the conclusion that there does not exist a causal relationship between the two¹⁹⁴. The author's investigation in Guangdong has also proven that there does not necessarily exist a causal relationship between economic development and the degree of democracy of election. Elections in places where the economy is less developed may well be more democratic, which is certainly the case for the two places the author visited during field study. But whether China is ready for direct election depends not only on the people, but also on whether or not the CPC is willing and ready for direct election. From the above discussion on the electoral systems of people's congresses and officials of governmental organs, it is not difficult to see that the CPC is not ready yet for direct election. Hence, under such circumstances, it is unrealistic to talk about expansion of direct election to a higher level or all levels.

In practice, democratic direct election of village residents' committees has already been clearly stipulated by legislation. Direct election of people's congresses at township and county levels is also provided for by legislation. The issue is whether direct election should be further expanded to municipal, provincial, or even national people's congresses? The author's view is that under current circumstances, the scope of direct election should not be further expanded, primarily because the election of grassroots people's congresses is still problematic. The most important problems are that the election does not really reflect the choice of voters and that the election organisers still interfere with and influence the election

¹⁹² See Xu Chong-de, "Zhonghua Renmin Gongheguo Xianfa Shi" (Constitutional History of the PRC), Fujian People's Press, 2003, p. 245.

¹⁹³ It was originally in "Zhannue yu Guanli" (Strategy and Administration), vol. 2, 2003; see also Cai Ding-jian, "Zhongguo Ren Suzhi Taidi, Gaobuliao Xuanju Zhiyi? – Jingji, Wenhua, Zhengzhi, Liyi yu Xuanju Xingwei Xiangguanxing diaocha yu fenxi" (Questioning the Argument That the Intellectual Quality of Chinese too Low to Have Election – Investigation and Analysis of the Relevance of Economy, Culture, Politics, and Interests to Election Behavior), in Cai Ding-jian, n. 41, pp. 199-261.

¹⁹⁴ See David Zweig, Democratic Values, Political Structures, and Alternative Politics in Greater China, United States Institute of Peace, at: <http://www.usip.org/pubs/peaceworks/pwks44.html>.

significantly. It is fair to say that basically direct elections of township and county people's governments are still confirmative elections under the control of the CPC Committees. They are not democratic election in the true sense. Under such circumstances, expansion of the scope of direct election will only increase people's indifference towards the electoral system, and will not achieve the objective of promoting democratic elections at all. Only when direct election at township and county levels becomes truly democratic, and beneficial to the development of democratic system, will it be time for expansion of the scope of direct election. Hence the reform of the electoral system should start from grassroots people's congresses, rather than expanding direct election to higher levels of people's congresses.

How big is the chance for democratic election of officials to governmental organs? From the discussion in Part four above, we know that some township governments have already started experimental reforms in direct election of their township heads. The problem with the direct election of a township head is that such an election is in violation of existing legislation. Hence, some scholars are of the view that such an election is unlawful and even unconstitutional. But there are also scholars who hold the view that such experimental reforms have their merits. For example, Professor Mao Shou-long, a distinguished political science scholar from Renmin University, has expressed the view that we should give enough room to local governments to experiment with various reforms rather than focus too much on the unconstitutionality of such reform. In China, "benign violation of the Constitution" still has a big market, and it has been the normal practice to experiment with something first, and if it proves to be good and successful, laws will then be amended. The current situation is that some local CPC Committees have obviously experimented with various bold reforms. Only in very exceptional cases where very often the bottom line of the Central Committee of the CPC or a sensitive area has been touched, would the Central Committee of the CPC call off the reform. Hence, in fact the Central Committee of the CPC has given implied consent to experimental reform of grassroots people's congress elections and wishes to find a feasible reform proposal which is not only appropriate to China's special circumstances but also consistent with democratic progress.

But unconstitutionality of direct election of a township head is only one aspect of the problem. Another more important legal issue is, once people accept direct election of a township head as appropriate, it directly denies the authority of the people's congress to elect officials to the governmental organs at the same level. Once voters have directly elected a township head, the town people's congress would only be able to exercise its authority to approve the result of the election. Otherwise, its decision would be in conflict with democratic election. But if the people's congress just simply approves the result of direct election, it would become a rubber stamp. That means direct election of a township head would deny one important authority and obligation of the people's congress, i.e. to elect officials to the governmental organs at the same level.

There are two solutions to this difficult question. One is to abolish grassroots people's congresses for the reason that they do not really have many functions to perform¹⁹⁵. The people's congress in X Town in Qingxin County, Guangdong Province only holds one meeting every year. Under such circumstances, it might be better to abolish grassroots people's congresses. This not only achieves the objective of simplifying grassroots government, but also avoids any potential conflict between a state power organ at grassroots level (township people's congress) and a democratically elected township head. The second solution is for a township people's congress to directly organise the township

¹⁹⁵ See Tian Bi-yao, "Xiangzhen Renda" (Township People's Congresses) in "2004, Zhongguo Renda Hongpishu" (2004 Red Book on People's Congresses in China), vol. 1, 2005, downloaded from: <http://www.lpci.cn/ShowArticle.asp?ArticleID=2409>.

people's government or to let the township people's congress perform the function of a township people's government. Then direct election of township heads can be abolished.

Which solution is then more preferable? In order to answer this question, one should consider it from two perspectives: constitutional and practical. From constitutional perspective, China has adopted a people's congress system. Chinese scholars' common understanding is that the Chinese constitutional system is in nature a parliamentary system and one fundamental characteristic of a parliamentary system is that parliament will establish the government. If this principle is followed, then the second choice is more in compliance with the requirement of Chinese constitutional system.

From the perspective of reality, the grassroots people's congress has never truly exercised its constitutional authority. This is because after the establishment of the PRC, candidates for officials to a township government have basically been decided by the CPC Committee at the same level, who will then be submitted to the township people's congress for confirmation. Though in recent years, some local governments have started their experimental reform of township head or deputy head elections, in the greater part of China, the election of township heads still follows traditional practice. Even in Guangdong Province where the economy is more developed than many other provinces, the traditional method is still used to elect township heads. Some pioneers in township head election reform have even gone back to using the traditional method of election. The reason for doing so is very likely to be constitutional considerations; a township government is already one level of government within the constitutional structure. The Central Committee of the CPC is bound to consider the possibility that any reform at township level might affect election at higher levels, and even the central people's government. So the CPC must be more cautious in dealing with the township head election reform. Hence from the perspective of reality, the author also believes the second solution is more preferable.

Moreover, the adoption of the second solution does not necessarily mean denying the right of citizens to have direct elections; people's right to direct election is realised through the election of deputies to a township people's congress rather than direct election of a township head. This is determined by China's constitutional system. The reason why people in China do not pay much attention to the election of the people's congresses is because people's congresses at different levels have not truly exercised their constitutional authorities. But that is not an inherent problem of a parliamentary system. Rather, it is because the people's congress system has not been truly implemented in practice.

The next issue is the future of China's electoral system. It can be seen from the discussion in Part two that the author is very optimistic about the future of village electoral system. What then will be the future of the other two electoral systems?

After analysing the history and current circumstance of China's electoral system, Cai Ding-jian has made the following observation:

"Though socialist democracy is progressive from an historical perspective, people still have great expectations for further development of democracy. Different views exist on the development of democracy and there exists disharmony between development of democratic election and the traditional method of "the administration of officials by the CPC". The development of democratic election is in a dilemma. On the one hand, legal conscience and demand is getting stronger for doing things according to legal and democratic procedures, ensuring that election will reflect the will of the voters, having democratic election and doing things according to law. On the other hand, the

requirement is also crystal clear that election must be conducted according to the will of the CPC Committees for the purpose of ensuring the realisation of the intention of the leaders and the CPC Committees, and ensuring that the CPC Committees are in control of election results. The existence of these two different demands has made it more and more difficult to organise elections, and the development of election practice is far from meeting the expectation of the citizens."¹⁹⁶

This comment has pointed out the key factor affecting the future of China's electoral system, i.e., the influence of the CPC upon the electoral system. In the past 30 odd years, China's economic reform has been spearheaded by the CPC and has achieved remarkable results. The electoral reform of village residents' committees has also been under the support and promotion of the CPC. After more than ten years of development, the village electoral system is developing in a healthy direction. Hence, the author believes that the future of the other two electoral systems is also determined by the decision of the CPC to undertake reform. Since people's congresses are organs of state power in China, the CPC is bound to deal with the reform of their electoral system more carefully and cautiously. Since each level of people's government is the organ in actual control and exercise of power, the CPC will also handle its reform very cautiously. The principle that the CPC shall be responsible for the administration of officials is not only applicable to all officials at county level or above, but also applies to the selection and appointment of members of standing committees of a county people's congress. Hence, the author is of the view that the reform of these two electoral systems shall happen concurrently, and their progress is mainly determined by the intention and decision of the CPC to reform.

Strengthening the leadership of the CPC, as has been emphasised by the 4th Plenum of the 16th National Assembly of the CPC, is also likely to be interpreted to mean strengthening the CPC's leadership over the election process. At present, the principle that the CPC shall be responsible for the administration of officials indeed emphasises the control of election results. On the other hand, the 4th Plenum of the 16th National Assembly of the CPC has also emphasised the establishment of democratic systems and has viewed it as something relevant to the survival of the CPC. The author's interpretation of the Decision is that the CPC has realised the necessity to reform various existing systems, including the electoral system. The author also agrees to the view raised by some scholars that China is ready to undertake reform of its political system. The issue is how to undertake the reform. As far as the election reform of people's congresses and officials to governmental organs is concerned, the principle that the CPC shall be responsible for the administration of officials will not constitute an obstacle to the development of democratic election so long as appropriate amendments are made to the Regulations by limiting its application to officials nominated by the CPC rather than all officials. The more important thing is that the CPC should realise that amendment to the principle that the CPC shall be responsible for the administration of officials will not necessarily have a negative impact on the ruling status and capacity of the CPC. Instead, it is quite possible that the reform might enhance the reputation of the CPC among voters, which will in turn contribute to the strengthening of the ruling position and capacity of the CPC. Hence, the author is cautiously optimistic about the future of the reform of electoral systems of both people's congresses and officials of governmental organs.

As to the reform of the electoral system within the CPC and the development of political democracy in China, some Western media have expressed the view that the publication of the White Paper demonstrates that hopes for political reform in China have suffered a

¹⁹⁶ See Cai Ding-jian, n. 41, pp. 30-31.

setback¹⁹⁷. The author holds a different interpretation of the White Paper. It is clear from the discussion in Part five that the White Paper has confirmed democratic election of village residents' committees though not giving any policy guidelines on election reforms of people's congresses and governmental officials. The White Paper has three chapters relevant to the CPC. On the one hand, the White Paper insists on the leadership of the CPC, on the other, it has made clear the necessity to develop democracy within the CPC and states that democracy within the CPC should be relied on to promote people's democracy. The author holds the view that when the CPC really achieves full democracy within itself, the inherent nature of democracy determines that the CPC will naturally develop people's democracy. Hence, the author's interpretation of the White Paper is that it has simply re-stated the relevant constitutional provisions as well as existing policies of the CPC on various issues, including the three electoral systems. But the White Paper has summarised and confirmed the experiences coming out of the experimental reforms the CPC has undertaken with regard to the electoral system within the CPC, and pointed out the direction for future development. It shows that the CPC has made a policy decision through the White Paper to give priority to the development of democracy within the CPC with the expectation that democracy within the CPC will lead naturally to the development of people's democracy, including the reform and development of the three electoral systems.

¹⁹⁷ See Jonathan Watts, Chinese Communists dash hopes of democratic reform, Friday October 21, 2005, *The Guardian*, at <http://www.guardian.co.uk/china/story/0,7369,1597425,00.html>.