

DECONSTRUCTING THE 2022 NPC

March 4, 2022

CHANGHAO WEI

Fellow, Paul Tsai China Center, Yale Law School

Founder, Manager & Editor, *NPC Observer*

I. NPC & ITS SESSIONS: THE BASICS

NPC ORGANIZATIONAL STRUCTURE

National People's Congress

• “highest organ of state power” • ~2950 delegates • meets annually

determines & appoints

Special Committees

• x10 • ~20–30 members each

elects

Standing Committee of the National People's Congress

• ~170 constituent members • typically meets every two months

directs

Council of Chairpersons

• 16 member • headed by Chairperson • powerful decisionmaking body

determines & appoints

Administrative Body

- General Office

Permanent Body

- Delegate Credentials Committee

Working Bodies

- Legislative Affairs Commission
- Budgetary Affairs Commission
- Hong Kong Special Administrative Region Basic Law Committee
- Macau Special Administrative Region Basic Law Committee

NPC'S CONSTITUTIONAL POWERS

- enact & amend “basic” civil, criminal, and organic laws, and other “basic laws”
- elect or appoint (or remove) state officials
- review & approve plans for national economic & social development
- review & approve the Central Government’s annual budgets
- amend the Constitution
- oversee implementation of the Constitution (2020 and 2021)
- decide on the establishment of provincial-level administrative regions
- decide on the establishment of special administrative regions & their systems
- alter or annul inappropriate decisions of the NPCSC
- decide on the questions of war and peace

WHAT'S ON THE NPC'S AGENDA? – PT. I

Annual	<ul style="list-style-type: none">• Work reports by the State Council, NPCSC, SPC, and SPP• Annual central budget and Ministry of Finance's accompanying report• Annual plan for national social and economic development and National Development and Reform Commission's accompanying report• Important legislation (since 2015 – a new norm?)
Periodic	<ul style="list-style-type: none">• 1st session: anointing a new state leadership; State Council reorganization*• 4th session: the next Five-Year Plan• 5th sessions: elections and quotas for delegates to the next NPC; measures for electing Hong Kong and Macao delegates to the next NPC
Rare	<ul style="list-style-type: none">• Constitutional amendment

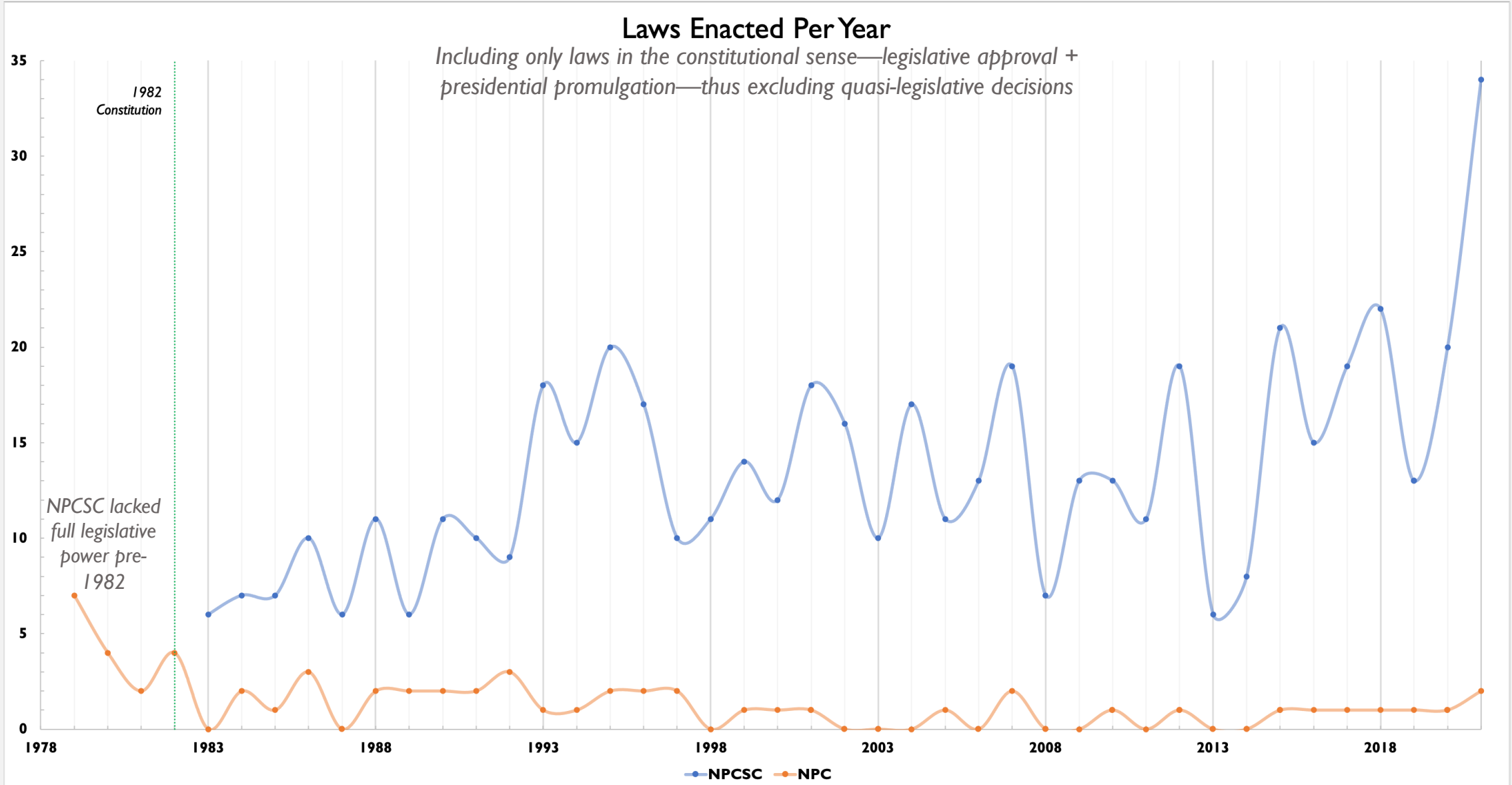
- Who decides and when?
 - **Proposed:** NPCSC – previous December (convening decision)
 - **Finalized:** NPC session's preparatory meeting – day before the session opens (now!)

WHAT'S ON THE NPC'S AGENDA? – PT. 2

- What about the delegates' bills?
 - Presidium (~170 members) decides, upon the Secretariat's recommendation
 - No delegate's legislative bill has been placed on agenda since 1982
 - Forwarded to the special committees for recommendations
 - Some may be reflected in annual legislative plans, released in April
- Is *the NPC* going to address / take action on issue X?
 - Technically, no, if the issue is not specifically listed on the agenda
 - But could be addressed by—
 - the official documents submitted for review; or
 - the delegates during deliberations and their written submissions.

II. NPC LAWMAKING

ROLE IN CHINESE LAWMAKING: NPC vs. NPCSC



NPC'S ROLE IN LAWMAKING: WHY SO SMALL?

Too many delegates

Too little time in session

Delegates serve part-time

Delegates lack expertise

Little authority to control own legislative agenda

Exclusive authority prone to encroachment by NPCSC

DIVISION OF LEGISLATIVE AUTHORITY

- **NPC**

- Plenary, including exclusive power to—
 - enact “basic” laws, including basic civil and criminal laws, basic laws on state organs, and other basic laws
 - enact laws that govern special administrative regions

- **NPCSC**

- Enact non-“basic” law
- Partially amend laws enacted by the NPC, but must not contravene their “basic principles”
 - **Corollary:** The NPCSC cannot repeal laws enacted by the NPC

- **Questions**

- What is a “basic” law?
 - Laws establishing the “most fundamental” systems & rules in a certain area?
 - Laws with “global, long-term, general, and fundamental” normative significance for the nation and the society?
- What is a “basic principle” of a law?
- How much is “partial”?

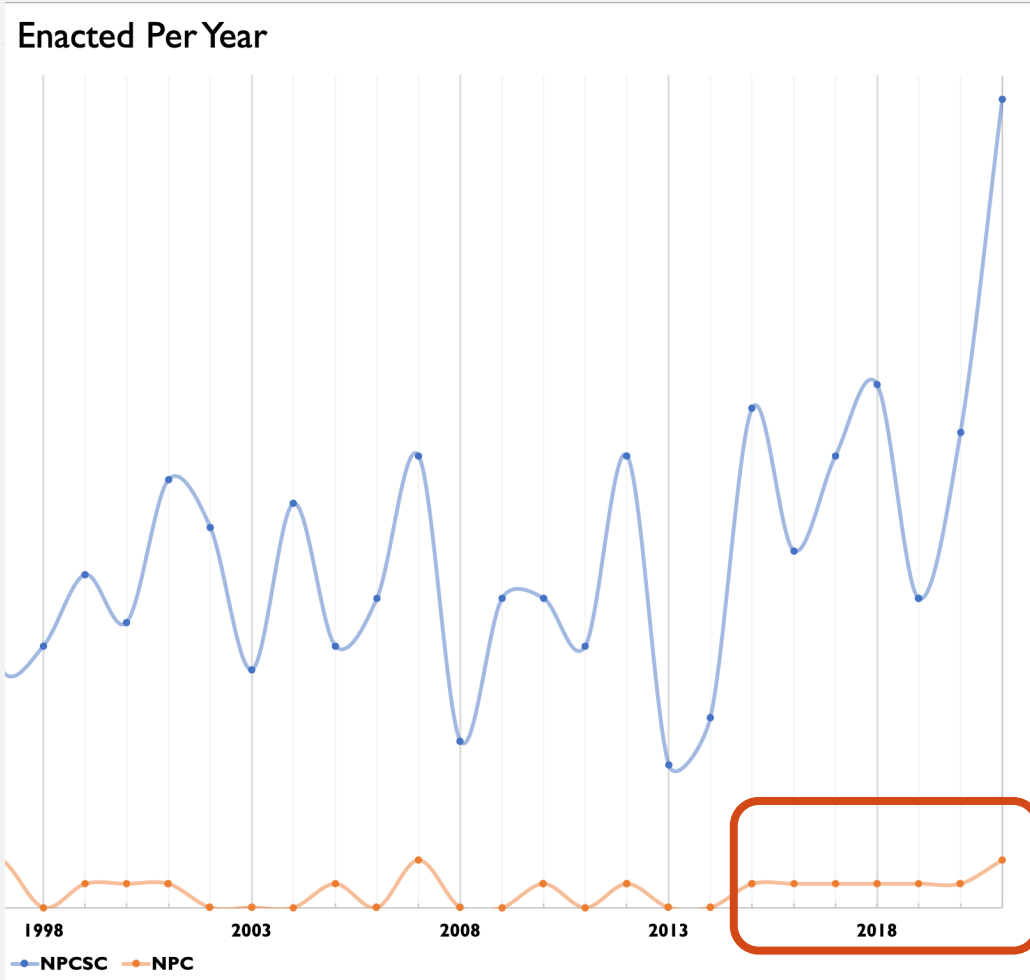
ARE THESE “BASIC” LAWS?

1. Agriculture Law 农业法?
2. Environmental Protection Law 环境保护法?
3. Martial Law 戒严法?
4. National Security Law 国家安全法?
5. Labor Law 劳动法?
6. Enterprise Bankruptcy Law 企业破产法?
7. Anti-Monopoly Law 反垄断法?
8. Law on Assemblies, Processions and Demonstrations 集会游行示威法?
9. Law on Population and Family Planning 人口与计划生育法?
10. Tort Liability Law 侵权责任法?

NPC'S LEGISLATION CATEGORIZED

1. **Basic civil laws:** *Civil Code, Civil Procedure Law, etc.*
2. **Basic criminal laws:** *Criminal Law, Criminal Procedure Law, etc.*
3. **Basic laws on state organs:** *NPC Organic Law, State Council Organic Law, People's Courts Organic Law, Supervision Law, etc.*
4. **Other basic laws:** *Education Law, Administrative Litigation Law, Charity Law, Foreign Investment Law, Nationality Law, Anti-Secession Law, etc.*
5. **Basic laws of special administrative regions**
6. **Laws repealing prior NPC enactments:** *Enterprise Income Tax Law, etc.*
7. **Laws enacted under the NPC's inherent legislative authority:** *NPC Rules of Procedure, Legislation Law, Budget Law, etc.*
8. **Other laws**

A NEW NORM FOR NPC LAWMAKING?



- 2015: *Legislation Law* amendment
- 2016: *Charity Law*
- 2017: *General Provisions of the Civil Law*
- 2018: *Supervision Law*
- 2019: *Foreign Investment Law*
- 2020: *Civil Code* & Hong Kong National Security Decision
- 2021: *NPC Organic Law* amendment, *NPC Rules of Procedure* amendment & Hong Kong Electoral Reform Decision
- 2022: (pending) amendment to organic law of local governments and people's congresses

NPC'S LEGISLATIVE PROCESS

- The NPC's review and approval of a bill is always the final step of a much longer process that originates in the NPCSC. When a bill comes before the NPC, it's considered relatively mature as a consensus has been built after the NPCSC's multiple reviews, the Party leadership has given its instructions on key provisions, so there is little room for further substantial changes.
- Whole legislative process can be broken down into four stages:
 1. Agenda-setting
 - Legislative plans: five-year, annual, and special
 - Unplanned projects
 2. Drafting — not necessarily by the legislature
 3. Deliberations — 3 reviews by default
 4. Vote and promulgation

THREE-REVIEW PROCESS: NPC EDITION



KEY INSTITUTIONS

NPC CONSTITUTION & LAW COMMITTEE

- Special committee
- 18 members (most serving part-time)
- Most have legal background
- Serve five-year terms



NPCSC LEGISLATIVE AFFAIRS COMMISSION

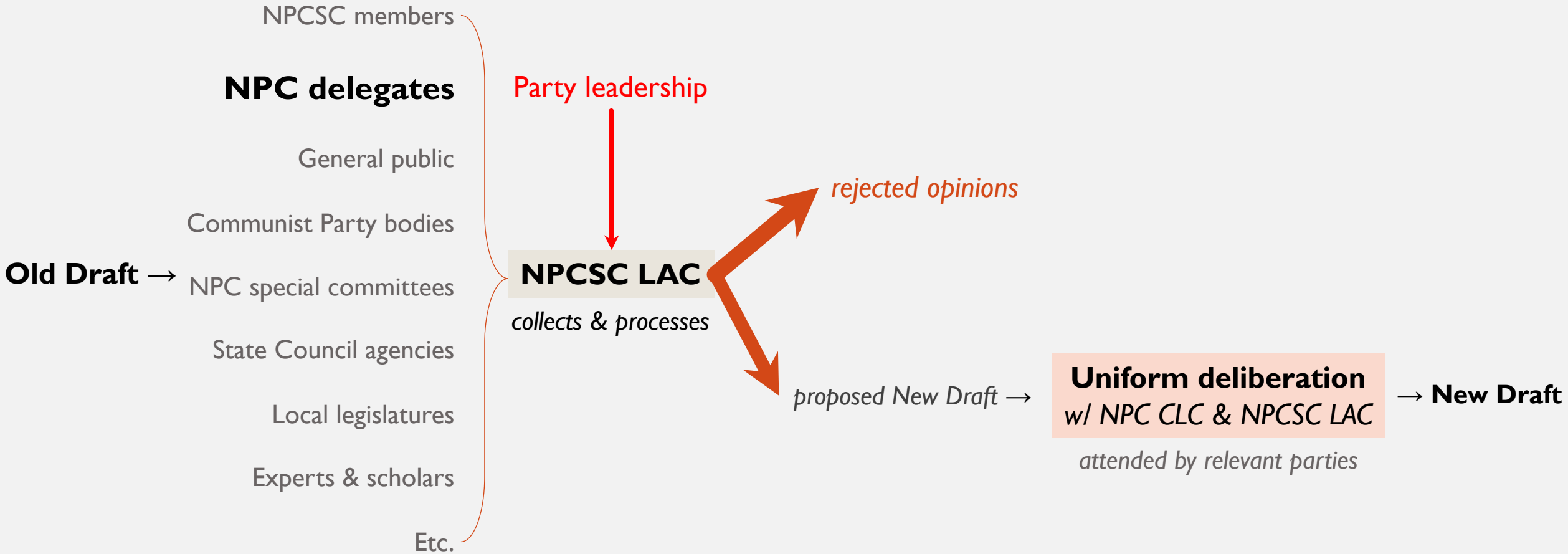
- Professional support body
- Headed by a director, a Vice Chair of the Constitution & Law Committee
- >200 staff members (as of 2020)
- Working full-time
- No term limits

UNIFORM DELIBERATIONS

统一审议

- Statutory authority of the NPC Constitution and Law Committee
- Cooperative efforts by the Committee and the NPCSC Legislative Affairs Commission
- Why?
 - Reduce inconsistency between laws
 - Centralize opinion-seeking and amendments processes to build consensus
 - Ensure stylistic and linguistic consistency
- How many? Same number as NPCSC reviews + 2 for NPC review
- Two important aspects
 - Widely soliciting opinions
 - Revising draft laws based on the opinions sought

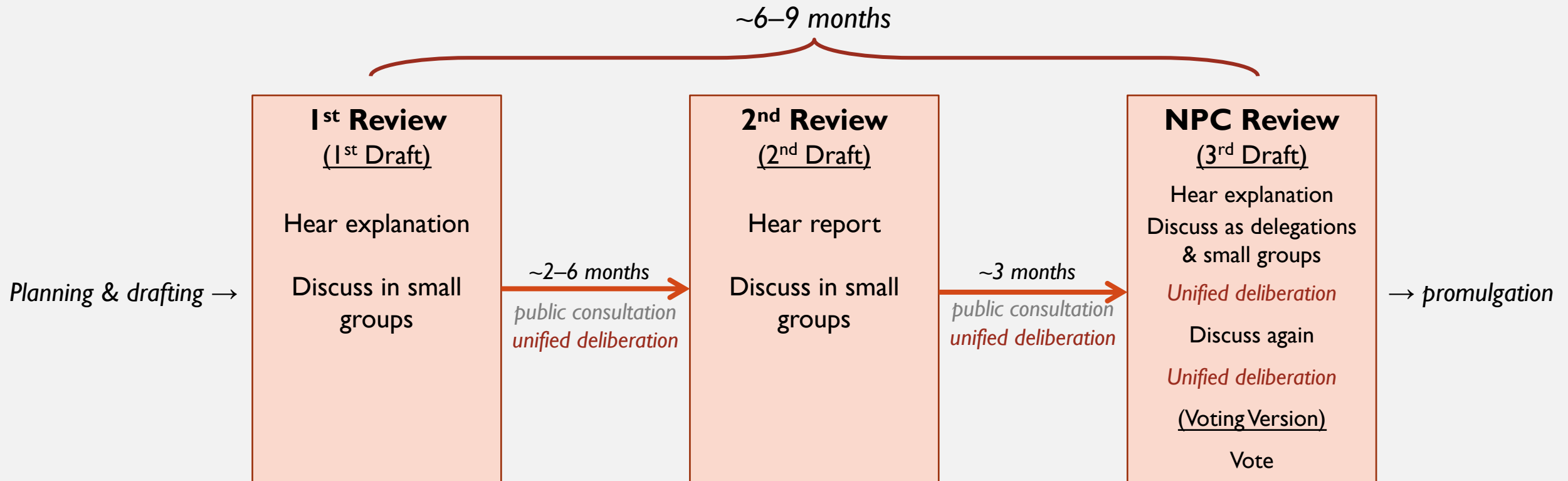
UNIFORM DELIBERATIONS



CHANGES TO BILLS DURING NPC REVIEW

- **Most changes are best described as refinements.** Some examples from the 2020 *Civil Code*:
 - property managers required to ensure compliance with “public order and environmental protection laws” — fire control laws added
 - “relevant organs” in charge of investigating falling objects — changed to “public security and other organs”
 - ban on sexual harassment by “speech or conduct” — changed to “speech, text, images, or physical conduct”
- **Occasionally more important changes:** Good Samaritan provision in 2017 *General Provisions of the Civil Law*: A person providing emergency assistance to another is exempt from civil liability for the harm caused to the person assisted—
 - unless the Good Samaritan was acting with gross negligence (Dec. 2016 draft)
 - unless the Good Samaritan, acting with gross negligence, caused “**undue major harm**” to the person assisted (Mar. 5, 2017 draft)
 - unless **the person assisted can prove** the Good Samaritan caused undue major harm by acting with gross negligence (Mar. 12, 2017 draft)
 - **in all circumstances** (final Mar. 15, 2017 version).

THREE-REVIEW PROCESS REVISITED: NPC EDITION



III. NPC IN THE NEW ERA: SOME TRENDS

NPC IN THE NEW ERA – PT. I

THE PARTY

- The Party's more direct and more prominent role in NPC lawmaking
 - Role of Party's priorities / Xi Jinping's personal directives in agenda-setting
 - Requirement to seek "instructions"
 - Direct review of draft legislation
 - Politburo Standing Committee
 - Central Deepening Reform Commission
 - Central Rule of Law Commission

LAWMAKING

- Increased pace and quantity of legislation
- Providing legal basis for reforms through reform authorizations
 - Regulatory reforms
 - Criminal justice
 - Judicial system
 - Military reforms
 - Supervision commissions
 - Etc. etc. etc.

NPC IN THE NEW ERA – PT. 2

OVERSIGHT

- General strengthening of NPCSC's oversight role
 - Special inquiries (very rough analogs of congressional hearings)
 - More detailed and additional reporting requirements
- Invigoration of “recording and review” process
 - Ensure compliance with Party's decisions and national law and policy
 - Engagement with constitutional questions
 - Incidental benefits to individual citizens

TRANSPARENCY & ACCESSIBILITY

- Increased public participation
 - Releasing more drafts for public comments
 - Directly involving communities through Grassroots Legislative Points of Contact
 - Encouraging public use of “recording and review”
- Additional disclosure
 - Summarizing public comments on legislation
 - Responding to citizen requests to review lower-level legislation
- Recent drop in transparency
 - Hiding agenda items
 - Fewer press conferences

IV. ALLOCATING SEATS IN THE 14TH NPC

ALLOCATING NPC SEATS: ELECTORAL UNITS

- **Total:** capped at 3000 by statute
- **31 mainland provinces:** proportionality + broad representation
 - Seats allocated solely on the basis of population: 1 per 670K (12th & 13th NPCs)
 - Same basic number seats: 8 (12th and 13th NPCs)
 - Seats allocated for other reasons
 - Adjustments made to achieve broad representation
 - Seats reserved for (new) Party and state leaders
- **Other electoral units:** fixed number of seats
 - PLA & PAP: 265 (since 9th NPC)
 - Hong Kong: 36
 - Macao: 12
 - Taiwan: 13
- **What to watch?**
 - Re-allocation based on 2020 Census results (detailed plan expected in April)
 - New mechanism for electing Hong Kong delegates

ALLOCATING NPC SEATS: DEMOGRAPHIC GROUPS

- **Ethnic minorities**
 - ~12% of total, but actually higher (13th NPC: 14.7%)
 - At least 1 for each ethnic minority
- **Women**
 - Typically: Higher than last NPC's (since 8th NPC), but goal not always met
 - 11th NPC: at least 22% (also not met: 21.3%)
 - 13th NPC as first seated: 24.9%
- **Overseas Chinese who've returned: 35**
- **Grassroots delegates**
 - Front-line workers, farmers, and skilled professionals: more
 - Migrant workers: more
- **Party and government cadres: Lower than last NPC's (12th and 13th NPC's)**

Q&A

Best ways to reach me

Work email: changhao.wei@yale.edu

NPC Observer contact form: www.npcobserver.com/contact