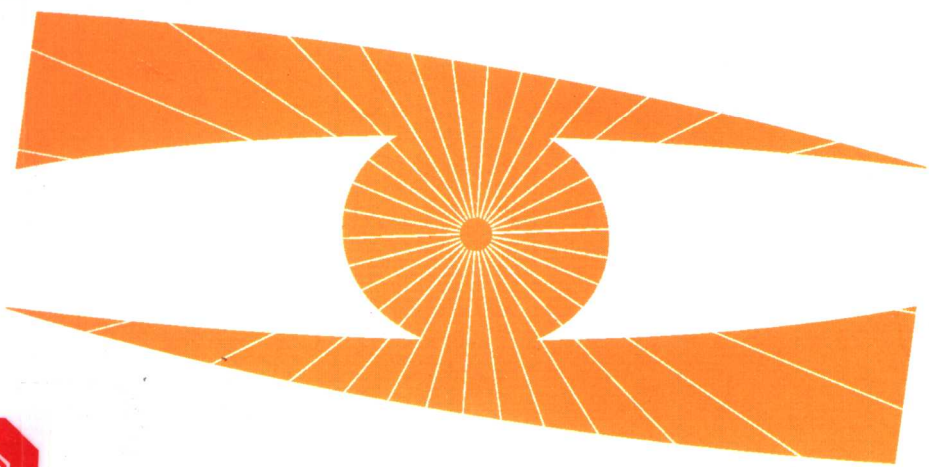


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# 选举监督论

人大代表选举监督研究

王金根 著



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## ■ 中文摘要

提出人大代表选举监督研究是具有一定的社会背景性的。它应景于本文导论中首先提出的三个方面：(1) 现实需要，即实现人民当家作主的需要；贯彻依法治国方略的需要；克服人大代表选举监督中所存在问题的需要。这些“需要”虽有主观特征，但不能视之为主观的东西，它是科学研究人大代表选举监督的先决条件和根本动力。(2) 现实基础，即人大代表选举监督活动开展和实践基础；马克思主义经典作家关于选举监督理论的思想基础；现代西方选举监督发展的启示与借鉴。本文认为，科学研究的应然性(需要)，要变为实然性，客观上是必须具备一定基础和条件的。人大代表选举监督研究同样具备了这些基础和条件。它既有活生生的实践活动，又有马克思主义理论的指导，还有西方国家相关实践的参考。(3) 理论意义，即有利于增强人大代表选举监督的自觉性；有利于正确处理选举监督实践中的突出问题，保障良好的监督效益；有利于掌握人大代表选举监督的规律，建立健全人大代表选举监督制度。本文认为，科学

研究的目的是,即在于认识和指导实践。人大代表选举监督研究是由实践到理论的产物,但理论只有回到实践中去指导才会有意义。

在上述背景影响下,本文导论接着对已有的相关研究成果进行了梳理,认为近50年来的人大代表选举监督研究大致可划为两个阶段,即20世纪50年代初至“文化大革命”前为萌芽和起步阶段,“文化大革命”后至今为现阶段。前阶段的研究较为零碎、低级,成果非常稀少;现阶段研究虽有初步进展,但也存在许多问题。因此,本文最后仍从总体上认定前人工作所形成的成果非常零碎而肤浅,缺乏系统性、整体性,已不适应实际发展。与此同时,本文提出了综合研究这一论题的设想:(1)进行多侧面和边缘学科研究,既从选举理论、监督理论等侧面进行研究,又从经济、政治、法律、历史、文化等众多交叉领域进行研究;(2)进行多层次研究,即将人大代表选举监督分为基本理论、历史、实践、规律等若干层面;(3)应用多学科的研究方法和研究方法进行研究,既应用比较研究方法,又贯串典型事例分析。本文认为,这一设想是必要的。因为符合研究对象(人大代表选举监督)的综合性特征,也全面贯彻了历史唯物主义精神。

根据论题研究的背景与设想,本文第一章对人大代表选举监督的基本理论进行了探讨,共分4个部分:(1)人大代表选举监督的内涵。本文认为科学理论的形成,需基于其本身的科学界定,而要对人大代表选举监督作出界定,本文先界定了“选举”、“选举监督”等概念,并在此基础上,提出了“人大代表选举监督”的概念,即所谓人大代表选举监督指的是在人大代表选举过程中,选区选民或选举单位采取一定形式和程序,依法对选举主持机构及工作人员、候选人及助选者、当选人等选举监督对象所进行的监督。它既是人大代表选举制度的重要内容,又是

国家监督体制中的重要组成部分。据此,本文又从多个层次和角度,分析了人大代表选举监督的性质与特征即人民性、法定性及特殊性;阐述了人大代表选举监督的作用即预防、矫正、反馈选举中的违法行为。(2)人大代表选举监督的主体。本文认为人大代表选举监督主体是人大代表选举监督行为的执行者,即依法享有选举监督权的选民或选举单位,选民或选举单位之所以能为人大代表选举监督主体,就在于人大代表选举监督的权力来源于这一主体,这一权力包含着了解权、检查权、审议权、处置权等四个方面。主体在享有这些权力的同时,也承担着一定的责任即要遵循选举监督原则、遵守宪法法律以及要有敢于监督的精神。(3)人大代表选举监督的对象与内容。本文认为,由于人大代表选举监督的目的就在于保障选举依法进行和选举人的权利免受侵害。因此,人大代表选举监督的对象包括选举主持机构及工作人员、候选人及助选者、当选人三个方面,人大代表选举监督的内容可包括对象制定的规范性文件、行为及其权限争议。(4)人大代表选举监督的形式与程序。本文认为,人大代表选举监督的形式与程序,对人大代表选举监督职权的行使和目的的实现具有重要的作用,没有合理的监督形式和严格的监督程序作保障,人大代表选举监督的价值必定难以实现。人大代表选举监督的基本形式应具有了解、评价、处理、惩戒等几种;而基本程序应具备启动、受理、审查、处理等程序。

循着人大代表选举监督基本理论探讨的思路,本文接着使用三章的篇幅对人大代表选举监督的进程进行了全方位考察:

一、关于历史考察。这一考察被列为第二章,其主要内容有:(1)分析人大代表选举监督的历史来源。本文认为我国现代选举监督,虽开始于晚清和民国对英美政体及选举监督形式的引入,但人大代表选举监督的理论渊源传承于新民主主义革

命时期中国共产党领导的革命根据地政权建设及选举监督实践；(2)回顾人大代表选举监督的产生与曲折。本文认为1953年新中国第一部选举法的颁发实施标志着人大代表选举监督的产生，但不久后即遇曲折，直至“文化大革命”结束；(3)概括人大代表选举监督的新探索，即1978年以后至今，人大代表选举监督实践取得的新进展。本文认为这些新进展主要表现在人大代表选举监督主体探索了一系列新监督形式，即在对候选人的监督方面，要求候选人由民主协商确定、候选人必须与选举人见面等；在对当选人(人大代表)的监督方面，建立了述职、旁听、警示、公示、罢免等制度。这些新的选举监督形式，实践已证明是行之有效的。

二、关于现实考察。这一考察被列为本文第三章，其主要内容是：(1)系统分析了人大代表选举监督所存在的问题，即认知、实行、外部影响三个方面。本文认为，认知上的问题主要表现为对人大代表选举监督缺乏正确认识其意义、内容及操作规律；实行的问题主要表现为缺乏监督意识、监督机制、监督力度；外部影响方面的问题主要表现为缺乏党内选举监督的推动、执法与司法监督的支持及舆论监督的配合。(2)重点解剖影响人大代表选举监督的诸因素。本文认为，影响人大代表选举监督的因素包括经济因素、政治因素及传统因素。(3)扼要阐述人大代表选举监督问题所造成的危害。本文认为这些危害降低了人大代表选举在人们心目中的威信，滋长了各种不良习气的蔓延，对人大代表选举的终极目的造成了严重后果。

三、关于对策考察。这一考察被列为本文第四章。本文认为，为有效防范和化解选举问题，促进人大代表选举监督正常开展，必须对加强人大代表选举监督采取以下措施：(1)强化人大代表选举监督观念，其强化目标即在监督主体中牢固确立权利



义务观念、遵制守法观念、监督制约观念,强化途径则是在制度、意识、主体、实践各个方面采取一系列科学政策;(2)加强人大代表选举监督法制化,就是使监督主体在选举监督过程中有法可依、执法必严、违法必究,加强的途径则是明确主体的权限职责、规范监督程序、设定法律责任;(3)强化人大代表选举监督职能,即强化对选举主持机构及工作人员、候选人、当选人的监督力度,改进选举监督的形式和方法,设立相关专门机构(选举监督委员会);(4)创造适宜人大代表选举监督的政治环境,主要应做到加强和改善中国共产党的领导,营造依法治国的良好氛围,加强同选举中的其他工作相协调,始终保持社会稳定。

在探讨和考察人大代表选举监督理论与进程的基础上,本文第五章形成了关于人大代表选举监督的3个基本结论:(1)作为人大代表选举制度的重要内容,它能从一个有趣的侧面折射出人大代表选举的诸多特征,即人大代表选举蕴含着丰富的监督含量、监督因素在人大代表选举中的重大作用、人大代表选举发展与选举监督存在着统一趋势;(2)作为国家监督体制的重要组成部分,它表明了其不可替代的地位和作用,这就是:人大代表选举监督对其他各种监督具有相互配合作用、人大代表选举监督对其他各种监督具有相互制约作用、人大代表选举监督与其他各种监督还共同促进着国家监督体制整体功能发挥;(3)作为一项深受传统影响的政治行为,它显示了其所要求的文化更新取向,而且国内市场经济发展、世界一体化进程加快以及人民监督愿望增强,已为这一更新提供了可能。

透过论题研究的3个基本结论,可以清楚地看到这一研究的理论创新成果:(1)提出了人大代表选举监督的新概念,并就这一概念的内涵进行了全面界定。(2)建立了人大代表选举监督的新体系,即在对其基本理论与基本历程进行了论证和发掘

后,已显现出人大代表选举监督作为独立体系的地位和价值。(3)形成了关于人大代表选举的新认识,即第一,人大代表选举与人大代表选举监督具有内在统一性。人大代表选举不是脱离监督制约的选举,完善人大代表选举监督也不是在于人大代表选举之外的单纯活动,选举监督就内在于人大代表选举之中,它提升着人大代表选举发展的程度;人大代表选举发展程度本身就具有监督的价值追求而不是纯粹的为选举而选举。第二,应以综合协调发展目标规范人大代表选举的发展。发展人大代表选举的过程既是民主政治建设的过程,也是同独断、专权、野蛮行为作斗争的过程,在这一过程中不仅需要完备人大代表选举监督机制及选举监督意识提高,还需要全民文化素质的提高。第三,应建设符合人大代表选举与人大代表选举监督一体化趋势的人大代表选举制度。这种制度的基本关系,运行机制等都具有监督的依据和价值的取向,等等。毫无疑问,这些新的认识对于改变人们长期形成的思维定势,即人大代表选举制度只包括成立选举主持机构、选区划分与代表名额分配、登记选民、代表候选人的提名介绍确定、投票选举、当选等环节和内容,显然是大有益处的。

最后需要提及的是,由于人大代表选举监督研究处于初级阶段,其自身又是一个政治性与法律性、理论性与实践性都很强的领域,因此,如此开拓性的工作,本书只能作为引玉之砖。

## ■ Abstract

The presentation of the study on the supervision over elections of Members of the People's Congress is of profound social background. Briefly, it includes three aspects: (1) the practical requirements, i. e. the requirement for the people to be their own master; the requirement to implement the strategy of ruling by law; the requirement to overcome the problems that exist in the supervision over elections of Members of the People's Congress. (2) The practical bases, i. e. the practical bases to carry out the supervision over elections of Members of the People's Congress; the ideological bases on the theories of the supervision over elections that put forward by the typical writers of Marxism, such as Marx, Engels, Lenin, Stalin; the inspirations and lessons that was drawn from the development of the supervision over elections in the western countries. (3) *Theoretical significance*. That is to say, it attributes to the upgrating of the conscientiousness of strengthening the supervi-

sion over elections of Members of the People's Congress, as well as dealing properly with prominent issues that appeared in the practice so as to vanguard the effectiveness of supervision, and it attributes to the mastering of the basic law of the supervision over elections of Members of the People's Congress, as well as building and consummating the provisions of the supervision over elections of Members of the People's Congress.

According to the above reasons, this dissertation briefly summarized the related study, and regards accordingly that the proceeding works by others are not systematically done and lagged behind the practical development largely. Therefore, this dissertation is intended to study this issue comprehensively. The main steps are as following: (1) to study this subject from a comprehensive aspects with study methods of borderline subjects, not only study this issue from aspects of election theory and supervision theory, but also from borderline areas such as economics, politics, law, history, culture, etc. (2) to study this issue from different levels. That is to study this issue from levels of basic theories, history, practice, and principles. (3) To study this issue with multi-subjects knowledge and varieties of methodologies, e. g. comparative methods and case study, etc. After all, this hypothesis incarnates the spirits of historical materialism.

According to the mentioned background and hypothesis, this dissertation firstly discussed the basic theories of the supervision over elections of Members of the People's Congress in four parts. Part one discussed the meaning of the supervision over elections of Members of the People's Congress. The contents of this part mainly

include the definition, the nature, the characteristics and the role of the supervision over elections of Members of the People's Congress. The most important section of this part is that it provided the definition of the supervision over elections of Members of the People's Congress. The definition mentions that the supervision over elections of Members of the People's Congress refers to that the electorates and election units supervise the election supervising subjects, such as election institute that authorize the election, the candidates and the organizers, according to law and abiding by certain procedures and measures. The definition is the main content of the election system of Members of the People's Congress, and it is also the main composing part of the nation's supervision system. Part two discussed the subject of the supervision over elections of Members of the People's Congress. The contents are mainly about the sources of supervising right and the supervision over elections of Members of the People's Congress, the right of the election supervision subjects, the responsibilities of the election supervision subjects. Part three discussed the objects and contents of the supervision over elections of Members of the People's Congress. It mainly includes the aim, the objects and the content of the supervision over elections of Members of the People's Congress. Part four discussed the form and procedure of the supervision over elections of Members of the People's Congress. It mainly includes the significance of the supervision over elections of Members of the People's Congress, the basic form and procedure of the supervision over elections of Members of the People's Congress.

After reviewing the basic theory, this dissertation gives a com-

prehensive examination to the process of the supervision over elections of Members of the People's Congress.

Firstly, what I present is a historical examination. In this part, (1) I traced the historical development of the supervision over elections of Members of the People's Congress. Though the form of modern election supervision generated from the introduction of western political system and the form of election supervision during late Qing Dynasty and the early years of the Republic of China, theories of the supervision over elections of Members of the People's Congress directly generated from the practices of government building and election supervision during the New Democratic Revolution in the Communist revolutionary bases. (2) I reviewed the generation and twisted development of the supervision over elections of Members of the People's Congress. I think that the first election law issued in 1954 marked the generation of the supervision over elections of Members of the People's Congress. But shortly after that, there began the so-called "Cultural Revolution", and there was a twisted development until the end of "Cultural Revolution". (3) I generalized the new probe to the supervision over elections of Members of the People's Congress. There is a smooth development after 1978 till now.

Secondly, what I present is a practical examination. The main contents of this part include: The main contents include: (1) A systematic analysis of the problems that appeared in the supervision over elections of Members of the People's Congress. After A detailed study, I classified these questions in three categories, that is recognition, implementation, and outside influences. (2) Analysis

on factors that effect the supervision over elections of Members of the People's Congress, i. e. , economic, political, and traditional factors. (3) The harmful results that have done with these problems that exist in the supervision over elections of Members of the People's Congress, namely, they have devalued the authoritativeness of the elections of Members of the People's Congress, they have caused the diffusion of bad practices, and they may do serious harm to ultimate aim of the elections of Members of the People's Congress.

Thirdly, I examined what kind of measure we could take to consummate the supervision over elections of Members of the People's Congress. I think the following measures will attribute to this aim. (1) To highlight the importance the supervision over elections of Members of the People's Congress. (2) To strengthen the legality of the supervision over elections of Members of the People's Congress. The main route for this aim is to clarify the rights and duty of the subjects of supervision, to institutionalize the procedures of supervision, ascertains the legal accountability. (3) To strengthen the function of the supervision over elections of Members of the People's Congress. That is to say, to improve the supervision over the institutions that take charge of the election and the personals that orientated the election, and the candidates, to improve the form and method of supervision over election, to set up a special institution (committee of supervision over elections). (3) To invent a political environment that suits the supervision over elections of Members of the People's Congress. That is to say, to strengthen and improve the leadership of the CCP. , to construct a better environment for

ruling with law, to strengthen the cooperation of different works during the elections, and ensure the stability of the whole society.

Based on the comprehensive examination to the process and theories of the supervision over elections of Members of the People's Congress, the following are my general conclusions on the supervision over elections of Members of the People's Congress. (1) As the main content of the election system of the Members of the People's Congress, it reflects many characteristics of the elections of Members of the People's Congress from a very interesting perspective. There is much supervision meaning in the elections of Members of the People's Congress. The role of the supervision over elections of Members of the People's Congress is of great importance. The Supervision of the elections and the elections themselves has a tendency to progress to the same destination. The supervision over elections of Members of the People's Congress is a pre-condition to improve the system of elections of Members of the People's Congress. (2) As an important part of the country's supervision system, the role and position of the supervision over elections of Members of the People's Congress can't be replaced. The supervision over elections of Members of the People's Congress can cooperate with other kinds of supervisions. The supervision over elections of Members of the People's Congress can balance the other kinds of supervisions. The supervision over elections of Members of the People's Congress can work together with other kinds of supervisions to make the whole supervision system of this country work. (3) As a kind of political behavior that heavily influenced with traditional factors, the supervision over elections of Members of the



People's Congress represent a new tendency of culture innovation. Due to the rapid progress of the market economy in China and the globalization of the world, the sense of supervision of the people also improved to a new level, so this tendency can't be turned back, and provided possibilities to cultural innovation.

From the above mentioned, I think my main innovation can be clarified as the following three points. (1) In nature, the supervision over elections of Members of the People's Congress and the elections of Members of the People's Congress is of unity. (2) The supervision over elections of Members of the People's Congress should be standardized with the comprehensive development targets. (3) A system of the elections of Members of the People's Congress suits the unifying tendency of the supervision over elections of Members of the People's Congress and the elections of Members of the People's Congress.

At last but not at least, what I ought to mention here is that, since the study on the supervision over elections of Members of the People's Congress is still in its primary stage, and it is also a study of a field that is of strong political and legal, theoretical and practical sensitivity. So, it is just a kind of pioneering work, and I hope that others will accomplish more fruitful work later.