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## **A Study on Decentralisation from Chinese Prospective**

### **“One Country, Two Systems” in Hong Kong, Macao and How It Should be Applied to Taiwan**

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## Abstract

The absoluteness and certainty of Sovereignty Theory makes it unsuitable for the modern constitutionalism, which requires the execution of power be restricted. As a result, we should emphasis on the study of complex distribution of state power. Decentralisation has been proved to be a useful strategy for better governance theoretically and practically. The successful practice of “One country, two systems” – implementation of decentralisation in Hong Kong and Macao – not only proves the aforementioned statements, but also provides precious experiences in solving Taiwan Issue. Based on decentralisation and the aforesaid experiences, long-term prosperity and unification of China can be reached.

## Key words

Decentralisation; Local autonomy; “One country, Two systems”; Taiwan Issue

## Introduction

The feature of supreme, unlimited and undivided of Sovereignty Theory makes it being challenged by modern constitutionalism; it became to fall into a decline. Decentralisation generated under the requirements asked by the modern constitutionalism, and it was proved to be a strategy for better governance of a state. The successful practice of implementations on decentralisation in both composite state and unitary state also proves that sovereignty and decentralisation interact with each other instead of being in contradiction.

This paper illustrates the aforementioned statements from Chinese perspective – “One country, Two systems” and specific implementations of it in Hong Kong and Macao, such implementations are embodied in several areas, including but not limited to legislation, jurisdiction, finance and tax. The success of “One country, Two systems” not only shows the effect of decentralisation being a strategy for better governance, even if in a unitary state, but also provides valuable experiences in solving Taiwan Issue.

However, since Taiwan Issue arose from Chinese Civil War, it formed independent democratic system in political and developed its own political party system, the implementation of decentralisation shall be different from that in Hong Kong and Macao. Based on decentralisation and the experiences through implementation of “One country, Two systems” in Hong Kong and Macao, this paper tries to figure out possible application of such regime in Taiwan to promote the unification of China.

## 1. Overview

### 1.1 Development of Sovereignty Theory and generation of decentralisation

The definition of Sovereignty contains two main points: it has the highest place within the state and it behaves independently in international society. However, sovereignty is not a kind of inherent power. In western histories, the concept of sovereignty came up under the conflict between Monarch and Pope.<sup>2</sup> Under such chaotic atmosphere, Sovereignty Theory of Jean Bodin generated.<sup>3</sup> His definition of sovereignty can be summarized as follows: “inherent and eternal power in republic” and “the highest power independently exist beyond the area of law”<sup>4</sup>. Ever since the generation of Bodin’s Sovereignty Theory, whether sovereignty belongs to people or the government that governs people – the dual attributes of sovereignty began to emerge. Thomas Hobbes deemed it to be unique and a power only be owned by one certain governmental agency; Jean-Jacques Rousseau, however, considered it to be owned by society or people even if he took Hobbes’s theory thoroughly. Rous-

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<sup>1</sup> Here we mainly discuss the practices in federal states.

<sup>2</sup> XU Zhixiong, *Historical Process of the Sovereignty Theory*. The Taiwan Law Review, 20(1997), p.22.

<sup>3</sup> ZHANG Qianfan. *Sovereignty and Decentralisation - Basic Theory on Relations between Central and Local*. Journal of National Prosecutors College, 2(2011), p.63.

<sup>4</sup> Jean Bodin, Abridged and translated with an introduction by M.J.Tooley. *Six Books of the Commonwealth*. Oxford: Basil Blackwell, p.25.

seau also took “commonwealth” – a concept he created – to be the basic of the foundation of Sovereignty Theory.

The feature of supreme, unlimited and undivided of Sovereignty Theory makes it being challenged by modern constitutionalism; it became to fall into a decline. In order to fulfill the requirements asked by the modern constitutionalism, amendment and adjustment have to be made on Sovereignty Theory. As a result, sovereignty shall not be regarded as an ultimate, extremely certain and the highest power, but as a power that can be divided and shared. US considered sovereignty as a power that can be shared by governments and departments of all levels through its constitutionalism practice, which also proved that sovereignty and decentralisation are not in a contradiction in modern state governance, decentralisation is a strategy for better governance.

## 1.2 Decentralisation in two forms of state structure

State power goes through complex distribution during its actual execution. Both unitary state and composite state have to deal with decentralisation - relationship between centralization and local autonomy - with deliberation. The major distinction between the two forms of state structure is whether local autonomy gets constitutional status.<sup>5</sup>

USA can be regarded as a typical representation of federalism<sup>6</sup> with decentralized character: federal law prevails in areas that of most significance (national defense, diplomacy, etc.) while state law being adopted in other areas. With full understanding of universality and particularity of contradiction, state governance in federalism countries really benefit a lot from decentralisation. Governing power is centralized in unitary state, local authorities only obtain limited power - granted through central authority - to deal with local affairs, rigid regulations occur inevitably in relation to it, which may lead to regional conflicts. I am not here to show or illustrate that one form of state structure is better than another through aforementioned comparison; the fact is that there appears a trend that these two forms of state structure are learning from each other: during the course of the development of economic globalization in federal state, tendency of centralization begins to emerge in some most significantly areas under the expansion of federal power; unitary state gradually notices the importance of local autonomy and provide support for it through Constitution.

As a result, two forms of state structure are interacting with each other instead of being in a contradiction, local autonomy and decentralisation are more of a political choice concerning better govern-

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<sup>5</sup> As to the major distinction between unitary state and composite state, scholars share different statements in connection with it, like TONG Zhiwei holds in *Discussion on Forms of State Structure* (Wuhan University Press, (1997), p.146.): “(the major difference between two forms of state structure) is whether the sovereignty is shared exclusively by central government or by central and local governments all together; the former situation exists in unitary state and the latter one exists in composite state.” However, through comparative analysis, I found that the scholars’ thoughts share the same goal in connection with the major difference between unitary and composite state: whether local autonomy is recognized and protected by Constitution. Hereby the author took Pro. ZHANG Qianfan’s statement in relation to this question. See: ZHANG Qianfan. Sovereignty and Decentralisation-Basic Theory on Relations between Central and Local. *Journal of National Prosecutors College*, 2(2011), p.79.

<sup>6</sup> As to the types of composite state, this paper concentrate on federal state, since it is the typical type OF composite state.

ance of state than a regime inherent in federal state.<sup>7</sup> Decentralisation's positive effect of being a strategy for better governance can be proved through "One country, Two systems" and its successful practices in Hong Kong and Macao in China, besides, such regime provides a feasible solution to solve Taiwan Issue eventually.

## **2. Decentralisation in China – "One country, Two systems" in Hong Kong, Macao**

### **2.1 "One country, Two systems"**

"One country, Two systems" is a gradually formed idea concerning state structure initially proposed in solving Taiwan Issue by DENG Xiaoping, it was successfully implemented in Hong Kong and Macao in 1997 and 1999.

The main contents of "One country, Two systems" is that the mainland region of China implements socialist system while Hong Kong and Macao – the integral parts of China – remain their previous capitalist system as two Special Administrative Regions based on the adherence to the "One China" principle; only the Central People's Government of People's Republic of China can represent China in international community; Special Administrative Region are entitled to have high degree of autonomy within the limits of the Constitution.<sup>8</sup>

### **2.2 Practices of "One country, Two systems" in Hong Kong and Macao**

Specific implementations of "One country, Two systems" in Hong Kong and Macao can be generalized as "high degree of independence legally with limited freedom politically", which can be analyzed from following perspectives<sup>9</sup>:

#### **2.2.1 Legislation**

Special Administrative Regions enjoy high degree of autonomy concerning legislative activities; the central authority only remains the final power of review. In accordance with Article 8 and Article 17 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereinafter referred to as "the Basic Law of Hong Kong") as well as *the Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter referred to as "the

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<sup>7</sup> ZHANG Qianfan. Sovereignty and Decentralisation-Basic Theory on Relations between Central and Local. Journal of National Prosecutors College, 2(2011), p.79.

<sup>8</sup> LI Bin. *Comparative Study on "One country, Two systems" and Federalism*. Relations Across Taiwan Straits, 6(2006), p.29.

<sup>9</sup> This part used ZHANG Qianfan. "Unification of China and Local Autonomy – Constitutionalism for Unification from the Basic Laws in Hong Kong and Macao". Journal of the East China University of Political Science and Law, 4(2007) for reference and combined the authors' study on regulations in the two Basic Laws in Hong Kong and Macao as well as comparative analysis through daily research in relation to this topic.

Basic Law of Macao”): previous laws existing in Special Administrative Regions shall be remained unless under exceptional cases, besides, Filing System is adopted in relation to the force of laws enacted through legislatures of Special Administrative Regions.<sup>10</sup>

*“Article 8 of the Basic Law of Hong Kong<sup>11</sup>*

*The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.*

*Article 17 of the Basic Law of Hong Kong*

*The Hong Kong Special Administrative Region shall be vested with legislative power.*

*Laws enacted by the legislature of the Hong Kong Special Administrative Region must be reported to the Standing Committee of the National People's Congress for the record. The reporting for record shall not affect the entry into force of such laws.*

*If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.”*

As to the implementation of law, national laws shall not be applied in Special Administrative Regions except for those listed in Annex III<sup>12</sup> of the two Basic Laws according to Article 18.

*“Article 18 of the Basic Law of Hong Kong<sup>13</sup>*

*The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.*

*National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.*

*The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.*

*In the event that the Standing Committee of the National People's Congress decides to declare a*

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<sup>10</sup> Unless the Standing Committee of the National People's Congress regards it as being contrary to the stipulations in the Basic Law, in this situation, the law will be invalid; however, it never happens so far.

<sup>11</sup> Since the stipulations in both Basic Laws share the same meaning, here the author took Hong Kong for example.

<sup>12</sup> These are mostly in relation to areas that can only be regulated by Central People's Government, such as diplomacy, national defense.

<sup>13</sup> The reason for taking Hong Kong for example has been illustrated in footnote 10.

*state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region."*

Thus can be seen that Hong Kong and Macao enjoy high degree of autonomy in legislation area, and the level of their autonomy power is even higher than federal states: in accordance with Article 6<sup>14</sup> of *the Constitution of the United States of America*, the laws of the United States which was made in pursuance of the Constitution is the supreme law of the land.

### 2.2.2 Jurisdiction

On the basis of Article 19 of the two Basic Laws, both Hong Kong and Macao enjoy independent jurisdiction as well as the power of final adjudication. The judges of Special Administrative Regions are highly independent in process of trial and in course of appointment and removal.

*"Article 19 of the Basic Law of Hong Kong<sup>15</sup>*

*The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication.*

*The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.*

*The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of State such as defense and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of State such as defense and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government."*

This is hard to realize not only in other local authorities and judicial authorities in China but also in federal states: the judgments issued by the Supreme Court of the United States of America shall be valid in the whole country, and it is an obligation for governments, courts and people of all the states

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<sup>14</sup> Article VI of *the Constitution of the United States of America*:

"All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."

<sup>15</sup> The author also took the example of Hong Kong based on the same reason illustrated in footnote 10.



to comply with.<sup>16</sup>

### 2.2.3 Finance and Tax

In correspondence with the high degree of autonomy in legislation, Special Administrative Regions enjoy the same level of autonomy in finance and tax. Article 106 of the Basic Law of Hong Kong and Article 104 of the Basic Law of Macao stipulate “Special Administrative Region shall use its financial revenues exclusively for its own purposes<sup>17</sup>, and they shall not be handed over to the Central People's Government. The Central People's Government shall not levy taxes in the Special Administrative Region.”

*“Article 106 of the Basic Law of Hong Kong*

*The Hong Kong Special Administrative Region shall have independent finances.*

*The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's Government.*

*The Central People's Government shall not levy taxes in the Hong Kong Special Administrative Region.*

*Article 104 of the Basic Law of Macao<sup>18</sup>*

*The Macao Special Administrative Region shall have independent finances.*

*All the financial revenues of the Macao Special Administrative Region shall be managed and controlled by the Region itself and shall not be handed over to the Central People's Government.*

*The Central People's Government shall not levy taxes in the Macao Special Administrative Region.”*

Although federal governments do not have rights to levy taxes in local governments, they can levy taxes to all citizens and legal persons within the border of the country generally, the high degree of autonomy of Special Administrative Regions can be seen through this comparison.

## 3. “One country, Two systems” and Taiwan

Successful practices of “One country, Two systems” in Hong Kong and Macao sufficiently prove the function of decentralisation on state governance, even in a unitary state. However, the reason for Taiwan Issue is different compared with Hong Kong and Macao, special consideration shall be taken into during the application of “One country, Two systems” in Taiwan, adjustment shall be made in relation to it. In combination with current political situation in Taiwan as well as the view of power distribution in theory of decentralisation, “One country, Two systems” shall be applied to Taiwan as follows:

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<sup>16</sup> LIANG Ping, XU Xiaoqin. *Comparative Study on “One country, Two systems” and forms of state structure*. Journal of Southwest Institute for Ethnic Groups. Philosophy and Social Sciences, 20(1999), p.80.

<sup>17</sup> Little difference can be seen from the specific regulations of Hong Kong and Macao further on in this paper, the stipulation here is from the Basic Law of Hong Kong.

<sup>18</sup> Since there is a little bit difference between Article 106 of the Basic Law of Hong Kong and Article 104 of the Basic Law of Macao, this paper here took these two articles for reference.

### **3.1 The relationship between Taiwan and the Central People's Government**

It is an undisputed fact that there exists an independent entity in Taiwan; decentralisation can be beneficiary in situation that two independent political entities (mainland and Taiwan) co-exist respectively with only one sovereign entity ("One China" principal) exists. In federal state, instead of being in a relationship between central government and local governments, the state and its constituent parts are all central governments with different limitation of power. Such limitation is stipulated through Federal Constitution, each part enjoys supreme authority within the limitation and directly executes power to people therein with no interference to other parts. The authorities of constituent parts are inherent instead of being granted from the whole from jurisprudence perspective. Therefore, the relationship between Taiwan and the Central People's Government shall be "centralized in theory, autonomous in practice" – areas in relation to principle activities (national defense, diplomacy, etc.) shall be governed by the Central People's Government with adherence to "One China" principle; Taiwan is not absolutely subordinate to central government, both of them are directly responsible to people within the scope stipulated by Constitution: Taiwan owns higher degree of autonomy than Hong Kong and Macao.

### **3.2 Autonomy and its limitation in Taiwan**

Hong Kong and Macao formed relatively sufficient and complete legal order, but fail to form independent democratic system in political and develop their own political party system due to the long term colonial rule, thus lead to the principle of "high degree of independence legally with limited freedom politically" during the application of "One country, Two systems". However, Taiwan Issue arose from civil war in China, not only did Taiwan form its own political, economic and social system in 1949, but also developed its political party system, on the basis of its political independence, distribution of power in Taiwan have to be different from Hong Kong and Macao. To maintain the stability and continuity of political regime in Taiwan, the application of "One country, Two systems" shall be "high degree of independence both legally and politically".

Unification between mainland and Taiwan represents our fundamental interests; limitation to autonomy shall be restricted considering special political regime of Taiwan. The higher degree of autonomy Taiwan enjoys, the better it develops as long as it strictly adheres to the "One China" principal.

## **Conclusion**

Sovereignty faces numerous challenges in modern society, decentralisation was successfully implemented in USA following the requirements of limited authority proposed by modern constitutionalism and is proved to be a strategy for better governance. Decentralisation and Sovereignty are not in contradiction, nor do they inherent in only one form of state structure. Both unitary state and composite state have successful practices in implementing decentralisation.

"One country, Two systems" represents the successful application of decentralisation in China. Under consideration of regional difference between these two places and the fact that such differences cannot be eliminated in a short time, decentralisation was adopted to maintain their stability. The

principal of “high degree of independence legally with limited freedom politically” helps Hong Kong and Macao enjoy proper autonomy and promote regional prosperity.

Successful practice of decentralisation in Hong Kong and Macao proves its feasibility in solving Taiwan Issue. In view of the differences between Taiwan and Hong Kong, Macao in essence and in process of historical development, the application of “One country, Two systems” in Taiwan must be different from that in Hong Kong and Macao. The relationship between Taiwan and the Central People’s Government is not only different from the relationship between the whole and the part in federal states, but also from the relationship between central government and local governments in unitary state. Under the adherence of the “One country, Two systems”, Taiwan shall have higher degree of autonomy compared with Hong Kong and Macao, such autonomy not only exists legally or economically but also politically to maintain political stability and development. I believe the successful practices of decentralisation in Hong Kong and Macao and the experiences thereof, as well as decentralisation – a strategy for better governance – can be beneficiary in solving Taiwan Issue and promoting its prosperity to achieve the win-win situation between mainland and Taiwan.

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