

The Effect of the “One Country, Two Systems” Policy on the State Structure and its Constitutional Significance

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I. The “One Country, Two Systems” Policy and its Legal Process

In December 1978, the Communiqué of the 3rd Plenary Session of the 11th National Congress of the Communist Party of China (CPC) mentioned: “With the normalization of the Sino-American relations, the prospect of China’s sacred territory of Taiwan to return to the embrace of the motherland and to achieve the great cause of national reunification is nearer in front of us.” Deng Xiaoping pointed out in January 1979 when he was visiting the United States of America: “We shall no longer use the term: ‘liberate Taiwan’. As long as we can achieve the reunification of the motherland, we shall respect the reality and the existing system there.” It can thus be seen that the idea of peaceful reunification of Taiwan and maintenance of the original system there after the reunification was preliminarily formed in late 1970s.

Ye Jianying, Chairman of the Standing Committee of the National People’s Congress (NPC) delivered an important speech to journalists of the Xinhua News Agency in September 1981, entitled “Nine Policies on Achieving the Reunification of the Motherland”, making the first comprehensive exposition of the idea on a peaceful settlement of the Taiwan Question, which includes the following contents: “Taiwan shall enjoy a high degree of autonomy after the reunification of the country as a special administrative region and keep its armed forces. The Central Government shall not interfere in the local affairs of Taiwan.” “The existing Taiwan society, economic system and way of life shall remain unchanged. Its foreign economic and cultural relations shall remain unchanged. Its private property, houses, land, business ownership, legal inheritance rights and foreign investment shall not be violated.” Deng Xiaoping said in January 1982 when he received an overseas friend the “Nine Policies” are actually the principle of “One Country, Two Systems”. Under the premise of achieving the reunification of the country, the main part of the country practices the socialist system while Taiwan practices the capitalist system. The term of “One Country, Two Systems” has since come into being.

However, the “One Country, Two Systems” concept at that time existed only as a great political idea. And there existed possibility of conflict with the constitution and other laws. In order to implement the great idea of “One Country, Two Systems”, it is necessary to obtain the legal recognition. The content of “One Country, Two Systems” has undergone the legal process of turning from the constitution to the international treaties and finally to the domestic laws.

First of all, it is necessary for the *Constitution of the People’s Republic of China* (hereinafter as

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“the Constitution”) to provide the “One Country, Two Systems” principle with an effective legal ground. The 5th Session of the 5th NPC adopted a new version of the Constitution in 1982. Article 31 of the new Constitution provides that “the State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in the light of the specific conditions.” Article 31 is the process to legalize the basic content of the nine policies announced by Ye Jianying, the Chairman of the Standing Committee of the NPC and has established the legal ground for the peaceful reunification of the motherland. However, the Constitutional article does not expressly point out the specific systems to be instituted in the Special Administrative Regions (SARs). These systems depend on the specific provisions of the later the *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* (hereinafter as “the Hong Kong Basic Law”) and the *Basic Law of the Macao Special Administrative Region of the People’s Republic of China* (hereinafter as “the Macao Basic Law”).

Secondly, the specific content of the “One Country, Two Systems” principle was later fully represented to the outside from the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong* (the Sino-British Joint Declaration), the *Joint Declaration of the Government of the People’s Republic of China and the Government of the Republic of Portugal on the question of Macao* (the Sino-Portuguese Joint Declaration). Although the “One Country, Two Systems” principle was first put forward to deal with the Taiwan Question, it was applied first to solving the Hong Kong Question and the Macao Question. This was because the British Government first put forward the Hong Kong Question to China almost at the same time as the Constitution had established the legal position for the SARs. Both sides agreed to start diplomatic negotiations on this issue. The heads of state of China and Britain signed the Sino-British Joint Declaration in Beijing on 19th April 1984. The Sino-British Joint Declaration has expressly stipulated that the Chinese Government shall resume the exercise of sovereignty over Hong Kong as of 1st July 1997 and establish the Hong Kong SAR in accordance with the Constitution. The Hong Kong SAR shall enjoy a high degree of autonomy. Its government shall be composed of local people. The current existing Hong Kong laws shall basically remain unchanged. Its existing society, economic system and way of life shall remain unchanged. Its human rights and freedoms shall be protected. The Hong Kong SAR shall keep its financial independence. The Central Authorities shall not levy tax on it. The Hong Kong SAR shall maintain and develop the economic and cultural relations with and sign agreements with foreign countries and the relevant international organizations in the name of “Hong Kong, China”.

With the successful solution of the Hong Kong Question, the Macao Question was soon solved without much difficulty. When China and Portugal established diplomatic relations in 1979, both sides reached understanding on the Macao issue. Portugal recognized that Macao is a Chinese territory. Both sides shall solve the Macao Question through negotiations, which took place and went on during the period between June 1986 and March 1987. Both sides signed the Sino-Portuguese Joint Declaration in April 1987. The Declaration has provided that the Chinese Government shall resume the exercise of sovereignty over Macao as of 20th December 1999 and establish the Macao SAR. The structure and content of the Sino-Portuguese Joint Declaration are very similar to those of the Sino-British Joint Declaration. It can thus be seen that the basic policy that the Chinese Government has adopted in Hong Kong and Macao is consistent. That is, Hong

Kong and Macao shall be established as SARs and practice the "One Country, Two Systems" policy. The SARs shall enjoy a high degree of autonomy. Hong Kong people shall rule Hong Kong. Macao people shall rule Macao. The original Hong Kong and Macao laws shall basically remain unchanged. Their original social and economic systems and way of life shall remain unchanged.

Finally, the domestic legislation has fixed the content of "One Country, Two Systems" in the form of the Basic Laws. The two Joint Declarations both mentioned that the NPC shall enact the Hong Kong Basic Law and the Macao SAR Basic Law, make decisions on the policies that the Chinese side committed in the Declarations and promise not to change them for 50 years. The Chinese Government started drafting the Basic Laws to fulfill its obligations to the Joint Declarations under international laws on the one hand and to implement the content of Article 31 of the Constitution on the other hand. The 3rd Plenary Session of the 7th NPC passed the Hong Kong Basic Law in April 1990. The 1st Plenary Session of the 8th NPC passed the Macao Basic Law in March 1993.

So far, the "One Country, Two Systems" principle had completed its legislative process and with the implementation of the Basic Laws, it had completed the transition from a political idea to the legal norms. Some scholars have pointed out: the "One Country, Two Systems" policy as a constitutional development achievement with multiple innovations has exhibited huge vitality and superiority in political, economic and cultural fields. It will gradually rewrite a series of traditional regular tendencies and patterns and value judgments in such fields as current politics, laws, government administration and citizen construction.¹ Other scholars have emphasized: the legalization of the "One Country, Two Systems" principle has provided a wealth of resources and practice materials for the study of the Chinese laws and the Chinese Constitution in particular.² Viewed from another angle, the Hong Kong Basic Law and the Macao Basic Law are the legal texts of the political idea of "One Country, Two Systems". Therefore, the two Basic Laws have not only the normative and universal features of existing laws, but also strong political overtones. Viewed from the legislation, the Basic Laws are the product of full democratic deliberation. They are reflected not only by the broad representation of the participants, but also by the one by one voting form of every article of the Basic Laws by the drafting committees. Only when two-thirds of the drafting committee members voted in favor could every article and every appendix of the Basic Laws be passed and adopted. This method is very rare in the legislation of laws in the countries across the whole world. This fully demonstrates the democratic spirit and prudent attitude of the legislators. Viewed from the content, the Basic Laws have exhibited obvious political balance function. On the one hand, not a few articles of the Basic Laws have come directly from the Joint Declarations, reflecting the original legal features of the Hong Kong and Macao regions. On the other hand, the Basic Laws have highlighted the sovereign power of the People's Republic of China (PRC) and clarified the regional administrative position of Hong Kong and Macao that the two SARs are directly under the Central Government. This has clearly pointed out the development direction for Hong Kong and Macao.

II. The Effect of the "One Country, Two Systems" Policy on the State Structure

2.1 Types of state structures

The state structure refers to the relationship between the political powers of each part of the

territory and the issue that every country must consider in determining the form of governance. Since the modern times, each national country has formed different state structures based on its own political, economic, and cultural conditions. There are mainly two forms of state structures in the world today: the unified state structure and the composite state structure while the latter is divided into federalism and confederation. The traditional constitutional theory holds that the local administrative regions of a unified country are divided by the Central Authorities in accordance with the administrative management requirement. The powers that the local authorities enjoy are not inherent but granted by the Central Authorities. The Central Authorities enjoy full sovereignty over the local regions and exercise sovereignty on behalf of the country to foreign countries. A country with a federal state structure is a country with the state structure composed of two and more sovereign states. Federal member states are sovereign states. When they form a federal system country, they transfer part of their sovereign powers to the federal system country for exercise while the rest of the powers are left in the hands of the member states. Under the federal system, the federal system country and the federal member states all enjoy their own sovereignty and have their own constitutions. The division of powers between the central and local authorities is prescribed in the federal constitution. All the powers that the federal constitution does not stipulate as belonging to the Central powers belong to the local authorities.

Therefore, the main differences between a country with a unified state structure and a country with a federal state structure go as follows: First, the power of local government comes from different sources. The power of a local government in a country with a unified state structure is granted from the central government. The local government is the extension of the central government and has no independent sovereign power. The power of a federal government in a country with a federal state structure comes from the transfer of the federal member states. The federal system country and the federal member states share “sovereignty”. Their relationship is a mere legal relationship. Second, the residual powers vest differently. In a country with a federal state structure, the powers of a federal system country are limited. The powers that the federal constitution does not expressly grant to the federal government belong to the federal member states. Therefore the issue of residual powers exists. However, in a country with a unified state structure, the local government is not a qualified subject for independent powers. It plays the role of a mere agent of the central government. Not only does it have no residual powers, but also all of its powers may become lost if the central government decides to withdraw the powers granted. Third, the local self-government is different in nature. The local autonomy in a country with a unified state structure is to meet the requirements of the customary and cultural differences of different nationalities without much political autonomous power. It is not protected by the constitution. The local government in a country with a federal state structure, which is limited only by complying with the federal constitution and laws. It has greater autonomy in local affairs and development of democratic activities and gets protection from the constitution.

This kind of label processing mode makes the unified system and federal system always in a state of conflict and produces completely opposite answers to whether they have “residual powers” and “local autonomous power”. This summary may perhaps be a clear reference in theory. However, the state structure form is not after all an academic term but a political term in practical theory. As a matter of fact, many countries are adjusting their original state structure forms in order better to meet the social and economic development requirement. For example, France has always been regarded as a country with a unified state structure system. It has since 1982 carried out the reform

of power division and transferred certain central powers to the local regions. This reform has produced profound changes to the French society. In order to adapt to this change, France amended its constitution in 2003, redefined the nature of the relationship between the country and the territorial units and declared that France is a "decentralized" country and has further expanded the local autonomy. In contrast with this, the traditional countries with a federal state structure system have introduced more and more country factors. The federal constitutions enacted in the 20th Century tended to integrate the federal member states into a more compact whole and let the Central Government play the leading role. For example, the new *Swiss Federal Constitution* that entered into force in 2000 has not only expanded the central power obviously, but also explicitly written the cooperative federalism into the constitution. Besides, although the federal governmental powers are limited, the sovereignty of the people is a universally accepted principle by federal system countries. In other words, the federal power comes directly from all the citizens rather than from the federal member states. In this sense, the federal system country is still a unified country. The central government represents the sovereignty of the country to other countries in the world and carries out rules domestically with the direct authorization of the people of the federal system country. It can thus be seen that the state structure forms that have been developed up till today, no matter whether a federal state structure system or a unified state structure system, have exhibited an extreme inclusive concept. Every country is seeking a different integrity and balance between the country unity and local autonomy in accordance with the requirement of its own national conditions.

2.2 The effect of the "One Country, Two Systems" policy on the state structure

When we study and examine the relationship between "One Country" and "Two Systems", we should notice that the "One Country, Two Systems" principle has not only made more lenient arrangement for the central and local relationship than that of the federal state structure, but also retained the administrative control method of the central controlling the local of a unified state structure. This state requires more political wisdom and legal skills to coordinate the central and local relations in order to enable the "One Country, Two Systems" policy to develop in a relative stable state. Specifically, the "One Country, Two Systems" policy has produced impacts on the state structure in at least the following two aspects:

First, the "One Country, Two Systems" policy has filled more contract spirits into the unified state structure system of China. China is a country with the longest history of a unified state structure system in the world. For the local government and people, the central kingdom has always had the supreme authority that cannot be resisted. However, due to the objective existence of the differences of local regions and the central powers themselves are limited, the Chinese society has always been a society of a unified state structure with the features of obvious local autonomy. In this sense, some scholars hold: "The establishment of the Special Administrative Regions will not cause fundamental changes to the unified state structure system of our country." Perhaps there is certain rationality in the statement.³ However, changes do have taken place and have important political significance different from the squire governance of any dynasties and kingdoms in the past in history. The most important change of them all is the contract spirit that is used to handle the central and local relations. The rights and obligations of both sides are explicitly written in the Basic Law and ensured for effective implementation. This has truly realized the institutionalized division of powers between the central and local authorities and laid a solid foundation for

marching toward the institutionalized power division between the central and local authorities.

Needless to say, the contract spirit is the rule that the federal countries must follow in dealing with the central and local relations. As a matter of fact, the “One Country, Two Systems” policy is similar to a certain extent to the intent of the American framers in the years when they established the federal state structure. The intent is not only to ensure that it is one country instead of a union of countries, but also to fully adapt to the special local particularities and meet the multiple political requirements. Here, the particularities include two aspects: First, there was not much connection between the Central Government and the Hong Kong and Macao region before their handovers except the common national feelings and the desire for national reunification. In the political and ideological field in particular, both sides had a profound ideological sense of diaphragm and kept a high vigilance toward each other. This situation is similar to the situation of high alert that the states of America held towards the United States of America when it was first established in 1776. Second, the market economy that Hong Kong and Macao have established and practiced for a long time on the basis of free competition has produced the main stream social values of advocating freedom and the importance of individual interests which are different from those in the mainland. This sense of liberalism also needs the protection of rules of law in the form of a contractual relationship. Therefore, the reunification way of the two sides with the contractual method to establish the rights and obligations of both sides met with the least obstacle and was unanimously accepted both by the Central Government and by the Hong Kong and Macao people.

The “One Country, Two Systems” policy complies in a certain sense with the constitutional method universally promoted by countries across the world to deal with the central and local relationship. Even a country with a unified state structure has more or less stipulated the local autonomous position and legal rights in its constitution, such as the post War World II constitutions of such Asian countries as Japan and Republic of Korea and the amended constitutions of such European countries as Holland and Portugal after they entered 1980s. In addition, the central and local relations have been incessantly adjusting since the reform and opening up. The purpose of streamline administration, institute decentralization and fiscal decentralization is to explore a stable central and local relationship to satisfy the social development demand. Therefore, there is reason to believe that so long as the Central Government and the Hong Kong and Macao Governments act in strict accordance with the Basic Laws, the “One Country, Two Systems” policy can fully become an important model in the legalized running of the central and local relationship in China and promote the development and effective running of the contractual relationship between the governments at all levels.

Second, the current arrangement of the “One Country, Two Systems” policy has injected more elastic space into the state structure development. The performance of any contract cannot be totally dependent on the parties. It is necessary to set up the referee system consisting of impartial and independent third-parties to provide protection for the successful completion of the contract. There is no exception to the contractual relationship even with the Government as the main contractor. In this sense, the “One Country, Two Systems” policy is very different from the federal system in that the policy has not set up a unified judicial system to coordinate the mutual relationships between the central and the local, the legislative and the executive. In accordance with the Basic Laws, the Hong Kong SAR and the Macao SAR have set up the Court of Final Appeal respectively to deal with the various cases in the region. The Supreme People’s Court does not have any direct contact with the SAR local courts. The right to interpret the central and local relationship

provided in the Basic Laws vests with the Standing Committee of the NPC. Viewed from the country as a whole, this approach makes the Chinese central judiciary non-existent in the true sense of the term. Judicial sovereignty was completely broken up and was unable to play a strong judiciary to maintain the unity and authority of the legal system, which has resulted in lowering its right position in the national power distribution. Generally speaking, there are three mechanisms to resolve the disputes between the central and local authorities: legal mechanism, political mechanism and monetary mechanism. Obviously it will be difficult for the legal mechanism to play its role because Hong Kong and Macao enjoy judicial independence and judicial adjudication. At the same time, the Basic Laws provide the financial independence of the SARs, which do not have to pay taxes to the Central Government. Even if the Hong Kong and Macao Governments intend to use money as weight, it is difficult for them to do so because the Basic Laws expressly provides that they need not pay taxes to the Central Government. The political mechanism may be applicable in the form of party organizations or human resources control. There are no party organizations in the Hong Kong SAR and the Macao SAR under the "One Country, Two Systems" policy. Therefore it is impossible to rely on the party organizations to adjust the relationship between the Central and the local Governments. So human resource control, or the centralized administration, is the only means left to maintain the stability of the regime and coordinate the relationship between the governments. Since the Basic Laws have provided a very limited range of central affairs, the SAR Governments shall administer almost all the local affairs except defense and foreign relations. As a result, it seems that the Hong Kong SAR and the Macao SAR can avoid frequent disputes over the functions and powers between the federal government and the governments of the member states of the federal country. In conclusion, the "One Country, Two Systems" policy has not only exhibited safeguarding the spirit of political pluralism, but also injected more elastic space to the form of a unified state structure country. It has also established the state authority above the rule of law and maintained the national sovereignty and supremacy.

III. Significance of the "One Country, Two Systems" Policy to the Construction of China's Constitutional Government

3.1 China's centennial constitutional implications

Since 1908 when the Qing Dynasty promulgated the *Imperial Constitution Outline*, China has had a hundred years long history of constitutional history. The constitutions promulgated by the various governments have exceeded ten. However, constitutional China has never witnessed any successful effect. The reason was that China was born unaccustomed to the climate of the constitutional mechanism. Or it might be that we have not only failed but also been unwilling to truly understand the subtleties of realizing the constitutional system. A simple review of the constitutional history helps us to better see the key issues. Generally speaking, China's centennial constitutional history can be divided into the following phases:

3.1.1 The constitutional stage of the Qing Government

In the mid and late 19th Century, with the approaching of the western powers, China's society of natural economy began to disintegrate and political crises occurred frequently. After the failure of the Sino-Japanese War of 1894-1895 and the westernization movement in particular, most of the reformers realized the importance of institutional construction and put forward the preliminary

claim of a constitutional monarchy. Reformers represented by Kang Youwei and Liang Qichao, further proposed the programs: “To extend civil rights, fight for democracy, open parliament houses and establish the constitution”. However, the idea of the reformers had touched upon the immediate interests of the rulers of the Qing Dynasty, and the reform of one hundred days was suppressed by the conservative forces. Although the reformers’ practice had failed, the idea of constitution and parliament debate continued on. Under the pressure of the domestic constitutional movement, the Qing Government set up a political study hall and implemented the bureaucracy reform in 1905. It promulgated China’s first constitutional document *Imperial Constitution Outline* in 1908. The Outline consisted of 23 articles, which were divided into two parts: the monarchy power and subjects’ rights and obligations. The 14 articles of the monarchy power were copied fully from the Japanese monarchy system, maintained the supreme position of the emperor and established that the emperor’s power was not restricted in any way. It was a monarchy system with the emperor having the true power to the extreme. Even this Outline with little progressive significance was the result of appeals and forced out by the revolution. Because the Qing government did not implement it sincerely, it triggered off revolutions. With the downfall of the Qing Dynasty, the *Imperial Constitution Outline* was down.

3.1.2 The constitutional stage of the Revolution of 1911 and warlords

After the Revolution of 1911 overthrew the corrupt rule of the Qing Dynasty, the provisional Nanjing Government was established in 1912 and Sun Yat-sen became the interim president and the Republic of China was established. The *Provisional Constitution of the Republic of China* was institutionalized in the struggle against the warlord Yuan Shikai. This was the first constitution of the Republic of China, consisting of 56 articles in seven chapters. This *Provisional Constitution of the Republic of China* was mainly divided into two parts: state systems and basic rights. It had established the principle and system of the vesting of the sovereignty with the people, separation of the legislative, executive and judicial powers and equality of everyone. It had granted more rights and freedom to the people. Therefore, it was democratic and revolutionary to some extent. However, the cabinet system designed by the “Provisional Constitution of the Republic of China” was extremely imperfect. The premier was basically the deputy of the president. The only power that he could check the president was that he could counter-sign the laws and orders while the counter-signature system was ambiguous in text and was used by Yuan Shikai to get rid of the parliamentary control. In the struggle between the democrats and warlords, the constitution had become a tool in the hands of Yuan Shikai. He developed “Republic of China Law (Draft)” in 1913, referred to as the “Temple of Heaven Draft Constitution”. In 1914, Yuan dished out the “Republic of China Law”, also known as “Yuan Shikai Law”. Warlord Cao Kun government promulgated the “Constitution of the Republic of China” in 1923, known as the “Bribery Constitution” because Cao became the “President” by means of bribery. Later in 1925, the Duan Qirui government concocted a “Draft Constitution of the Republic of China”. Since the Duan Qirui government collapsed before the convening of the national congress of delegates having the constitutional rights, this draft constitution had come to nothing.

3.1.3 The constitutional stage of Nanjing Government

After the victory of the northern expedition, the warlord dictatorship was declared destroyed. The Beiyang government became collapsed. The whole country became reunified once again. The capital was moved to Nanjing. China began a lengthy constitutional “Kuomintang (KMT) party rule” period. The Provisional Constitution for the Period of Political Tutelage of the Republic of

China" which was promulgated in 1931 was an important legal document of the KMT reign. It consisted of 89 articles in eight chapters. Article 85 provides that the Central Executive Council of the KMT Central Committee exercises the power to interpret the Law. Since the law was interpreted by the KMT, the party had the supreme power. Therefore, the law apparently reflected the KMT party rule nature during the political tutelage period. The "Constitution of the Republic of China" promulgated in 1947 was adopted by the National Congress of delegates without the participation of the CPC. So it was still a "KMT Constitution", an ultimate result of the KMT party rule product. It is worth noting that this "Constitution" was added with Chapter X: "the Central and local authorities". Article 107 enumerated central legislative and executive matters. Article 108 enumerated central legislative and executive matters or matters entrusted to provinces or counties for execution. Article 109 enumerated provincial legislative and executive matters or matters entrusted to counties for execution. Article 110 also enumerated the county legislative and executive matters. For the un-enumerated matters, the control authorities would divide them in accordance with their nature and the legislative council would resolve the disputes on the division of powers. It can thus be seen that although the 1946 "KMT Constitution" was one that nominally emphasized a unified state structure, it obviously is touched with a strong color of a federal system.

3.1.4 The constitutional stage of the PRC

The CPC acquisition of the state power in 1949 represents the fundamental change of the state nature. In addition to the "Common Program" having the provisional constitutional nature, the CPC has established a total of four constitutions. It is generally believed that the 1954 CPC Constitution was relatively complete and achieved better social effects. However, leftist mistakes have occurred in China since 1957. The expansion of class struggle had destroyed the democratic principles and also violated the basic rights and freedom of the citizens granted by the Constitution. The Cultural Revolution broke out in 1966 and greatly destroyed the Constitution and rule of law. Therefore, the 1954 Constitution had not been seriously implemented. The 1975 CPC Constitution was the product under the influence of ultra-leftism and was therefore regarded as a regression. The 1978 CPC Constitution reflected the efforts to bring order out of chaos but was still tinged with the leftist trend of thought. The current CPC Constitution adopted and promulgated by the 5th Plenary Session of the 5th NPC on 4th December 1982 has been the most stable constitution since the founding of the PRC. It has expressed that efforts shall be concentrated to carry out the modern socialist construction, develop democracy, improve legal system, adhere to reform and opening up spirit and also provide more detailed protection of the rights of the citizens. At the same time, it is this Constitution that has provided the SARs in accordance with the "One Country, Two Systems" principle and provided the constitutional ground for the later legislative activity of the Hong Kong Basic Law and the Macao Basic Law.

China's constitutionalism thought germinated at the critical moment of salvation. Therefore, it has always had a strong utilitarian color. However, this is not necessarily a wrong motive, but easily makes us concerned about the short-term effect of the constitutional government and neglect the necessity of long-term construction. The great difference in particular between the constitutional system construction and the traditional politics and culture more hindered the effective operation of the constitutional system. The stubbornness of the Qing Dynasty, the tyranny of warlords and the KMT adhering to the party governance all show clearly that no authority is willing to be bound and no authority is willing to accept supervision. It is not only necessary to have a set of practical institutional systems to carry out continuous and effective supervision, but

also necessary to keep high vigilance over the exercise of powers and grant the right and freedom to the people to expose the power corruption and violence because the check of power with people's right should be one of the essences of constitutionalism. Revolutions have failed to reap the constitutional results. In all previous regime changes, from the Revolution of 1911 to the Beiyang warlords, all the revolutionaries and warlord politicians demonstrated the legitimacy of their action by promoting constitutionalism as their banners. However, the success of the revolution has not promoted the growth of constitutionalism. A revolution may overthrow an old regime but has failed to break up the old state system. It is more impossible to establish and maintain a new state system. Once the rule of a state is locked in the autocratic model, it is very normal that constitutionalism will meet with great difficulty because constitutionalism is to break the tyranny, make a relatively balanced distribution of power structure so as to protect relatively balanced allocation of resources and interests. Therefore, revolution and constitutionalism are completely incompatible in essence. Finally, in a certain sense, constitutionalism is indeed the product of mutual struggle and compromise of the various interest groups and requires them to fulfill in good faith. In order to restrain the actions of those in power in violation of the constitution, it is of great importance to establish a certain kind of independent and effective constitutional safeguard mechanism. Only when this safeguard system has been established will constitutional era be also coming.

3.2 The “One Country, Two Systems” has promoted the innovation of the constitutional system in China

Since 1980s, China's constitutionalism has ushered in a best development opportunity in history. The reform of the economic system has been developing in an in-depth way. The free market economy required by the constitutional construction has become increasingly mature. The accumulation of wealth has increased people's sense of autonomy and freedom. In the process of maintenance of personal wealth, people put forward the requirement for the state administration according to law and the requirement for the rule of law. The increase of the citizen sense has enabled them to start the use of such communication tools as the public opinions and media to effectively fight against injustice. Cases of protecting civil rights through constitutional means have occurred from time to time. Under this circumstance, although “One Country, Two Systems” is a principle and policy established to achieve peaceful reunification of the motherland, it has become an important system arrangement in the process of the national constitutional development through the provision of the Constitution and the Basic Laws. It has created a new situation in the construction history of China's constitutional system.

First of all, the “One Country, Two Systems” concept is a completely new political idea. It is a constitutional construction process to put it into practice and implement it as a specific political system and legal system. It not only requires political wisdom, but also legal skills. Both experiences from success and lessons from failures are valuable wealth of China's constitutional development and are China's contribution to the constitutionalism of the world because the Hong Kong Basic Law and the Macao Basic Law are after all a pioneering work in the world of constitutionalism. The idea of “One Country, Two Systems” has unified Hong Kong and Macao with the motherland, which are greatly different from the mainland in institutions and culture. Even the *United States Constitution* and the *Treaties of European Union* have just unified regions which are not very different in political and legal traditions. The Chinese Constitution, however, has

included regions with greatly different political, legal and cultural traditions. This reunification is achieved not through high-pressure policy but with the Basic Laws that provide high protection for human rights, democracy, rule of law and local autonomy. This can be deemed as a great progress of China's constitutionalism and has enhanced the confidence and courage of the Chinese people to independently build a constitutional country.

Secondly, the relationship between the Hong Kong and Macao regions as the local governments and the Central Government has been established by the Constitution and two Basic Laws. This is an extremely important legal development in China's constitutional history. It can be said that this is the first time for China to stipulate in legal terms the relationship between the central and local authorities under the "One Country, Two Systems" policy and has opened a prelude to legalization of central-local relationship. Although many problems still remain to be settled, the central-local relationship is after all recognized as constitutional issues to be dealt with. The powers of the Central Government are limited within a certain scope. It no longer merely depends on the administrative power or the party organization to coordinate the work between the central and local authorities. This is of great reference significance to the future political development of China. With the in-depth development of reform and opening up in the Mainland, institutionalized division of power has increasingly become an important content in the political life. On the one hand, citizens' appeals for rights begin to receive institutional responses from the government. The government is learning and acquiring the capability for negotiation and compromise through dialogues and negotiations with the citizens and social forces. This is an indispensable administrative power of a government in a democratic society.⁴ On the other hand, although the governments at all levels still retain the traditional pan-moralist features, they rely more and more on the legitimacy of their political performance and achievements to obtain the legitimate grounds for their political rule. The local and central governments are more and more relying on tangible rules and regulations to constrain their respective scope of rights and obligations.

Thirdly, the Hong Kong and Macao regions have obtained the opportunity to practice constitutional democracy under the "One Country, Two Systems" policy. The two Basic Laws have been prepared in accordance with China's Constitution, have institutionally implemented the Sino-British Joint Declaration and the Chinese-Portuguese Joint Declaration and absorbed the voices of Hong Kong and Macao to a certain extent. Therefore, the two Basic Laws are constitutional in a certain sense. Many of their contents have reflected the common principles and values of modern constitutional documents. For example, although the executive still retains the dominant power in the political structure and the power of the legislative council is limited, the legislative authority has after all changed its original consultative status. Some of the bills put forward by the SAR Governments have not been adopted by the provisional legislative council, which has embodied the check of the executive power by the legislative council. The judicial system has been completely retained and the court of final appeal has been established. The division of power has exhibited a preliminary scale. The principle of a high degree of autonomy and "Hong Kong people ruling Hong Kong" and "Macao people ruling Macao" has enhanced the political enthusiasm of citizen participation. Political society has developed. These practices are not only the regional affairs of Hong Kong and Macao but also have provided some experience for the constitutional development throughout China. In a certain sense, the "One Country, Two Systems" policy has provided a protective shield between the Hong Kong and Macao regions and the

mainland and provided an opportunity for the full development of freedom, democracy and constitutionalism. How far this practice can go depends not entirely on the people's will of the Hong Kong and Macao regions. We can only place our hope on the constitutional democracy that Hong Kong and Macao and the Mainland China will jointly achieve. This is because the political development of the Hong Kong SAR and the Macao SAR after their handovers has become part of the political evolution of whole China. The "One Country, Two Systems" policy is not merely an institutional compromise product. The success of the Hong Kong and Macao constitutional democracy has made contributions to the innovative transformation of the Chinese political tradition.

Finally, the legal system linked with the two Basic Laws has different legal and cultural traditions under the "One Country, Two Systems" policy. Hong Kong falls under the common legal system while Macao originates from the European continental legal system. The practice of the two Basic Laws has not only provided important venues for the contact, dialogue and interaction between the mainland and Hong Kong and Macao but also closed the gap between Hong Kong and Macao for interaction and communication which were originally quite different in legal systems. People have realized that it requires time and patience, goodwill and leniency to eliminate conflict and coordinate different legal cultures. The collision and fusion of the legal cultures has provided a rare opportunity for China in the transitional period to learn and study the various kinds of effective legal systems and promote the construction of the constitutional system.

Notes:

- ¹ Jeong Wan Chong (2012). *My Outlook on "One Country, Two Systems" (Revised Version)*. Macao: One Country Two Systems Research Center, Macao Polytechnic Institute. 32.
- ² Tian Hengguo (2005). Constitutionalism of "One Country, Two Systems" and Its Historical Significance. *Party History Research and Teaching*. Issue 6. Liang Zhiping. "One Country, Two Systems" and the Construction of Chinese Constitutional System. *Hong Fan Comments*. Volume 13, Number 2. 284.
- ³ Xu Chongde (Ed.) (1994). *Coursebook for the Basic Laws of Hong Kong and Macao*. Beijing: Renmin University of China Press. 53.
- ⁴ Cai Dingjian (2006). Development of Constitutionalism in Transitional Period of China. *Journal of the East China University of Politics and Law*. Issue 4.