

Probe into the Structure of State Powers in the Practice of the “One Country, Two Systems” Policy

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“It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.”¹ How do Chinese people in the mainland, Hong Kong, Macao and Taiwan on both sides of Taiwan Strait organize the state machinery of the completely reunified China? With the proposal of the idea of “peaceful reunification” and the policy of “One Country, Two Systems” and the issuance of various detailed policies, the return of Hong Kong and Macao and the successful practice of “One Country, Two Systems”, the unitary structure of state powers in China became to have an obvious feature of “One Country, Two Systems”. This article attempts to apply the basic theory of constitutionalism to analyze the basic features of the state power structure of “One Country, Two Systems” and discuss the evolution of the state power structure of “One Country, Two Systems”.

I. “One Country, Two Systems” cannot change the state structure of unitary system in China

The state structure of unitary system of in China has deep historic and realistic causes. The policies of “peaceful reunification” and “One Country, Two Systems”, the return of Hong Kong and Macao, and the practice of their high degree of autonomy have not changed the unitary system of state structure in China.

1.1 The determinants for the unitary system of state structure in China

The causes for China to adopt the unitary system of state structure can be summarized as follows:

Firstly, security cause. Besides the lessons left in the Chinese history of feudal separation which resulted in wars and destitution of people, the warlordism and the tangled warfare among different warlords, the threatening and invasion of and the separation and destroy by the imperialism since modern times have made Chinese people realized deeply the necessity of defending the integrity of sovereignty, territory and national security. The unitary system state of structure and a powerful central government are the premise for the state security.

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Secondly, economic cause. The economic ties between different nationalities and different areas have been kept close. Since early times, nationwide trade volume was relatively big. After the Tang and Song Dynasties, the complementarity of economies and cultures in different areas was very prominent with rice, cotton, silk and tea from the south frequent exchanged with livestock products and cereals in the north. As the majority nationality in China, Han nationality is agricultural nationality and they were in need of grand irrigation and transportation projects such as harnessing the Yangtze River, the Yellow River, the Huai River and the Grand Canal, and they were in urgent need of a powerful central government.

Thirdly, nationality cause. The development of historic situation of reunified China is closely related to the frequent migrations of ancient Chinese peoples, the frequent exchange among the different nationalities and the long term assimilation of different ethnic groups. Many nationalities which were originally isolated from each other have gradually form a unified whole with interdependence and diversity through constant contacts, fusion and assimilation, constant separation and disappearance.

Fourthly, cultural cause. The different nationalities have been living together for a long time, adopting the cultural fruits of each other, the assimilation of culture provides foundation for political identification, and a lasting great affinity and coherence was developed among different nationalities. From the perspective of cultural history, the ancient Chinese civilization is outstanding in the history of the whole world with respect to the continuity of its development. The continuity in the cultural history includes two aspects: the continuity of the development of language and character on the one hand, and the continuity of the scholarship itself. If we measure various ancient civilizations in these two aspects, we will find that only China's continuity in cultural history has a meaning of completeness. The development of ancient Chinese language has never been broken. The whole development process of Chinese language and characters from oracle to inscriptions, from inscription to seal character (zhuan calligraphy), from seal character to official script (li calligraphy), from official script to regular script, from regular script in traditional form to that in simple form, is clear and complete. In the ancient history of China, there was separation between the south and the north, however, the tradition of scholarship has never been broken. For example, the historical science of the Sixteen States in the most chaotic north was not broken, instead, it was relatively prosperous. On the other hand, the Chinese culture of "great unification" has a very long history: from the Xia Dynasty, the concept of a unified state began to appear, then the thought of "great unification" advocated by Confucius, the founder of Confucianism, and Mencius, the epitomizer of Confucianism, was realized in the Qin Dynasty, and this thought was reinforced gradually after Emperor Qing Shihuang united China. Although there were various fightings and wars launched by different interest groups for their own interests during the following two thousands years, they were all aiming at unification. As an illustration, the Three Kingdoms after the Qin and Han Dynasties were in a tripartite confrontation, the unification was not forgotten; the separation into the Southern and Northern Dynasties was ended with the unification of by the Sui and Tang Dynasties; the confrontation among the Southern Song Dynasty, the Jin Dynasty, the Liao Dynasty (also known as Kara-Khitan Khanate) and the Yuan Dynasty was simply for the domination of central plains and unification of China. The Ming Dynasty and the Qing Dynasty both united China and realized the great assimilation of different nationalities and the wish of all people to unite the country, and a situation of integrated Chinese nation with multiple nationalities and a sole sovereignty was developed. Although some feudal dynasties adopted way of

governance different from that in the mainland in the area of nationality minorities (eg., the royal court appointed the chief of nationality minorities and the hereditary resident commissioner “Tusi”), such system with the nature of local autonomy has always been a component of the unitary state structure instead of a separate political system independent of the central government. Even though the theocratic Kasha regime remained for a long time in Tibet, it was also a local government with its title conferred by and under the command of the central government instead of independent regime. Since modern times, the *Interim Constitution of the Republic of China* clearly declared China as a country with integrated territory, independent sovereignty, and unified ethnic nationalities. The *Constitution of the Republic of China* also stipulated clearly that China is a unitary state with high-degree centralization and unification. In the memory of Chinese nation, people could enjoy stability and prosperity when there was unification while they would suffer destitution, misery and vagrancy when the state was separated. Great unification has become the cultural spirit and eternal belief of the Chinese nation.²

Fifthly, geographical cause. China is located at the eastern end of Euro-asian continent with the Himalaya Mountain and the Pamir Plateau on the west as defence. Unlike some ancient civilizations which are located at the vital transportation line of migration, China enjoyed relatively stable environment for its national activities. Due to the natural geographic defences with the ocean to its east and south, desert to its north, mountains to its west and southwest, it was easier for China to develop inwards than outwards, therefore, a natural introvert was formed which is one of the conditions for forming state unification and territorial integrity.³

1.2 The “One Country, Two Systems” policy has not changed the structure of state powers in China

At the end of September 1981, Ye Jianying spoke to the reporter of Xinhua News Agency: “After the country is reunified, Taiwan can enjoy a high degree of autonomy as a special administrative region and it can retain its armed forces. Taiwan’s current socio-economic system will remain unchanged, so will its way of life and its economic and cultural relations with foreign countries. There will be no encroachment on the proprietary rights and lawful rights of inheritance over private property, houses, land and enterprises, or on foreign investments”. In January 1982, Deng Xiaoping said: “Under the policy of ‘One Country, Two Systems’, ‘Two Systems’ are allowed. But the other system should not affect the system in mainland, nor should our system affect the other system.” In July 1983, Deng Xiaoping said: “After reunification, Taiwan will become a special administrative region. It will be distinguished from the other provinces or regions of China by its high degree of autonomy. It will have its own administrative and legislative powers, an independent judiciary and the right of adjudication on the island. It will run its own party, political, military, economic and financial affairs. It may conclude commercial and cultural agreements with foreign countries and enjoy certain rights in foreign affairs. It may keep its military forces and the mainland will not dispatch troops or administrative personnel to the island.” Deng Xiaoping once stated: to realize the formulation of “One Country, Two Systems”, several aspects in Hong Kong remain unchanged – Hong Kong’s current social and economic systems will remain unchanged, its legal system will remain basically unchanged, its way of life and its status as a free port and an international trade and financial centre will remain unchanged, and it can continue to maintain or establish economic relations with other countries and regions. We have also stated repeatedly that apart from stationing troops there, Beijing will not assign officials to the government of the Hong

Kong Special Administrative Region (SAR). This policy too will remain unchanged. There shall be station troops to safeguard our national security, not to interfere in Hong Kong's internal affairs. China's policies with regard to Hong Kong will remain unchanged for 50 years, and the Central Government means this. China's policies towards Hong Kong will remain the same for a long time to come, but this will not affect socialism on the mainland. The Chinese people are confident that "One Country, Two Systems" will work. Deng Xiaoping once described such situation as "the horse will race, and the dance will be danced." He further stated that: "we say that the system will remain unchanged for 50 years because one generation will only administrate for 50 years, the next generation is responsible for the administration for a long time to come." In 1984, 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* was signed, and in 1987, 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* was signed. The *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereinafter as "the Hong Kong Basic Law") effective in 1997 stipulates that: "The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government. The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law." The *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as "the Macao Basic Law") effective in 1999 stipulates that: "The Macao Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government. The National People's Congress authorizes the Macao Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law." On 15th October 2007, Hu Jintao pointed out in his Report to the 7th National Congress of the Communist Party of China (CPC): "We will uphold the principle of 'peaceful reunification and One Country, Two Systems' and the eight-point proposal for developing the relations between the two sides of the Taiwan Straits and advancing the process of peaceful national reunification in the present stage. We will never waver in our commitment to the one-China principle, never abandon our efforts to achieve peaceful reunification, never change the policy of placing our hopes on the people in Taiwan and never compromise in our opposition to the secessionist activities aimed at 'Taiwan independence.' With a firm grasp of the theme of peaceful development of cross-Straits relations, we will sincerely work for the well-being of our compatriots on both sides of the Straits and for peace in the Taiwan Straits region, and safeguard China's sovereignty and territorial integrity and the fundamental interests of the Chinese nation." Therefore, the proposal of "One Country, Two Systems" still comply with our tradition of the unitary state structure.

According to the practice of high-degree autonomy in Hong Kong and Macao, the "One Country, Two Systems" policy did not challenge the unitary state structure, instead, it reinforced our unitary state structure. On the one hand, the National People's Congress (NPC) not only authorizes a high degree of autonomy to Hong Kong and Macao through the Basic Laws, but also makes the best use of the function of the Central Government in policy guiding and

macro-economic control and roots for the social and economic development in Hong Kong and Macao with the purpose of keeping the long-term stability and prosperity of Hong Kong and Macao. The implementation of “Individual Visit Scheme”, signature and implementation of the Closer Economic Partnership Arrangement (CEPA), deepening of the Guangdong-HongKong-Macao cooperation and the launching of a series of projects such as the development of Hengqin and Hong Kong-Zhuhai-Macao Bridge has not only brought Hong Kong and Macao smoothly out of the Asian financial storm and the world economic recession, but also brought Hong Kong, Macao and the Zhu Delta area onto the track of joint development. It is the exercise of leadership of the central government that has made the policy guide and macro-economic control at the state level particularly effective, and it is the unitary state structure of China that has made the mutual benefit and cooperation between different areas more convenient. On the other hand, over ten years of prosperity and stability after the return of Hong Kong and Macao, and the promising prospect of development has played a radiating and exemplary role to the social economy of mainland China and Taiwan, especially of the Pearl River Delta area. The actual mutual benefit and cooperation has made people realize that we can only face the future challenge with integrated development and complementary advantages, the old idea of minding one’s own business at the beginning of the return of Hong Kong and Macao has become part of the history, and the integrated development has started a new chapter of cooperation and development. All of the above sufficiently indicates that the “One Country, Two Systems” policy did not challenge the unitary state structure; instead, it obviously reinforced the unitary state structure.

In a word, the “One Country, Two Systems” policy does not change the unitary state structure although it is interpreted differently with respect to Hong Kong and Macao and Taiwan. The practice of “One Country, Two Systems” has not challenged the unitary state structure; instead, it has reinforced the unitary state structure.

1.3 Challenge of the idea that China should adopt composite state structure

Regarding the state structure of China after the complete reunification, there have always been different opinions. Some are for unitary system while some are for composite system. The author holds that the proposal of composite state structure is not grounded. According to the current theory of composite state structure, the composite state structure is divided into the confederal system and the federal system. However, under the confederal system, the states constituting the confederation have their own sovereignty; therefore, the confederal system is not a state in the sense of sovereignty. The common form of composite state structure is only the federal system. It is incredible to consider either the confederal system or federal system as the system of state structure for the reunified China.

Firstly, according to the determinant for the unitary structure of state power, the formation of the structure of state powers is determined jointly by various factors. Both the design of the authority in power and the recognition by the people can not be done arbitrarily without taking account of the historic tradition, cultural background, geographic factors, security, political and economic factors. The Chinese culture of “great unification”, security factors and economic factors all determine that the unitary system of state structure is a necessity for China.

Secondly, the practice of the “One Country, Two Systems” policy further reinforces the unitary system of state structure of China. The return of Hong Kong and Macao and the practice of the “One Country, Two Systems” policy in Hong Kong and Macao have not only confirmed in its form

the unitary system of state power under the "One Country, Two Systems" policy through the Hong Kong Basic Law and the Macao Basic Law, but also safeguarded in reality the prosperity and stability of Hong Kong and Macao, the joint development of Hong Kong and Macao together with mainland, especially the Pearl River Delta area, the improvement of the welfare of people and protection of the common interests. The development of the economic integration of Guangdong, Hong Kong and Macao has gradually broken various market barriers after all, constantly integrated various resources, improved the competitiveness of the regional economy in the world and further reinforced the capability of defending against the risks in the international market. In contrast, the practice of federal system will cause various political, legal barriers for economic cooperation and non-government exchanges and bring adverse impact on the common development. The return of Hong Kong and Macao has greatly reinforced the national coherence and competitiveness. It takes over a century of struggle for Chinese people to come together to recognize the common interests and state structure, should we be torn apart again and should our agreement be changed?

Thirdly, the unitary system of state structure is the core interest of Chinese nation. The diversity in various parts of our motherland determines that China should not adopt the federal system of state structure. For example, there exists great difference between the mid-west and the southeast coastal area in natural conditions, social, economic, technological, cultural and educational aspects, the gap between the mid-west and the southeast coastal area will become larger and larger without the policy support and preferential policies of a powerful central government. On the other hand, if we adopted the federal structure of state powers, there would be great barriers for the movement of talents, production materials and capitals from the mainland and for the economic and technological exchange. For example, the south-eastern coastal area might reject the influx of people from mid-west for employment due to their own problem of unemployment while the mid-west might increase the price of raw materials provided to the south-eastern coastal area. Thus, trade wars, wars of unemployment will bring inestimable losses to the common development of various areas of our motherland.

Fourthly, with respect to the structure of state powers, it is impossible for Taiwan to set up an independent state. Some are of the opinion that confederal system and federal system should be the alternative state structures since according to the statement of the CPC on the Question of Taiwan, Taiwan will have its own administrative and legislative powers, an independent judiciary and the right of adjudication on the island, and it may even keep its military forces. Further, the leaders of CPC also alleged that everything is negotiable under the premise of the *1992 Consensus*. According to the author, people who are of this opinion forgot the premise of such allegation, that is, the principle of "One Country, Two Systems". The basic interpretation of the "One Country, Two Systems" principle has been stated clearly above in this article. Regarding the *1992 Consensus*, on the subject of the "One China principle", both sides recognise there is only one China – both mainland China and Taiwan belong to the same China, but both sides agree to verbally express the meaning of that one China according to their own individual definition. The People's Republic of China's (PRC) position is that there is one, undivided sovereignty of China, and that the PRC is the sole legitimate representative of that sovereignty. The Republic of China's (ROC) position is that there is one, undivided sovereignty of China, and that the ROC is the sole legitimate representative of that sovereignty. However, we can not deny that the state structure is the unitary system whether the undivided sovereignty of China is represented by the PRC or ROC. Further, the existence of the separatists in Taiwan is a warning for the structure of state powers under the "One Country, Two

Systems” policy that once the federal system is adopted, their separatist activities would be rampant, the state sovereignty, the integrity and security of the state territory would be harmed and the core interest of Chinese nation would be in severe crisis. Therefore, the Taiwan issue must be kept within the unitary system of state powers.

II. The structure of state powers in China after the reunification will have the feature of “One Country, Two Systems”

The current structure of state powers in China is a combination of unitary system and “Two Systems”, and it is a state structure with the feature of “One Country, Two Systems”. The author thinks that the current state structure can be called the state structure of “One Country, Two Systems”. Such unitary system has obvious Chinese characteristics such as the establishment of SARs, two systems, four frameworks of local powers and coexistence of four types of social forms.

2.1 Coexistence of different social systems

According to the Hong Kong Basic Law and the Macao Basic Law, the former capitalist system and life style in Hong Kong and Macao will remain. According to the statement of the CPC on the Question of Taiwan, the current social system and life style in Taiwan will also remain after the reunification of the two sides of Taiwan Strait. Under the background of the principles of “peaceful reunification” and “One Country, Two Systems”, under the premise of keeping the unitary system of state powers, the design of the basic reunification system of coexistence of socialism and capitalism within one sovereign state does not only reflect the humanist tradition of tolerance and harmony of the Chinese culture, but also indicate the nature of republic, which is significantly provocative for countries and areas with different systems to resolve the problems left from the history and to carry out friendly cooperation.

2.2 Newly established administration

Article 31 of the *Constitution of the People’s Republic of China* (hereinafter as “the 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 NPC in the light of the specific conditions. It is stipulated in the Hong Kong Basic Law: “the People’s Republic of China has decided that upon China’s resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People’s Republic of China, and that under the principle of “One Country, Two Systems”, the socialist system and policies will not be practiced in Hong Kong. The Hong Kong Special Administrative Region shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government. The National People’s Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.” It is stipulated in the Macao Basic Law: “the People’s Republic of China has decided that upon China’s resumption of the exercise of sovereignty over Macao, a Macao Special Administrative Region will be established in accordance

with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the principle of "One Country, Two Systems", the socialist system and policies will not be practised in Macao. The Macao Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government. The National People's Congress authorizes the Macao Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law." Therefore the two SARs are newly established local administrations of China with high degree of autonomy.

2.3 Coexistence of four frameworks of local powers

At the state level there is the structure of unitary system of "One Country, Two Systems" while at local level the local administrations in mainland, Hong Kong, Macao and Taiwan will keep maintaining their respective current structure of governance. Therefore, within the unitary state, there will be four frameworks of local powers. From the perspective of the state level, under the structure of "One Country, Two Systems" and in accordance with the principle of democratic centralism, the regions of Taiwan, Hong Kong and Macao and mainland China will elect people's representatives to participate in the administration and discussion of state affairs and participate in the policy making at the state level. The NPC authorizes Taiwan, Hong Kong and Macao to practice the "One Country, Two Systems" policy and a high degree of autonomy. From the perspective of the local level, the Constitution has set the political system of democratic centralism for the mainland, and such principle must be complied with from central government to local governments at provincial, municipal, county and village level. The Hong Kong Basic Law and the Macao Basic Law provide the executive-led political system with the executive and the legislature checked and balanced with each other and an independent judicature in Hong Kong and Macao. At the same time, Hong Kong maintains a two-level executive framework with the SAR executive and district administrations while Macao practices single-level executive framework. In Taiwan, a political system with five powers of executive, legislature, judicature, control and examination separated from each other and checking and balancing each other. Under the unitary state structure, four frameworks of local powers will become a new feature of the state structure of "One Country, Two Systems".

2.4 Coexistence of four types of social forms

Four types of social forms will appear in China under "peaceful reunification and One Country, Two Systems". Firstly, four lifestyles will appear within one single state, the current lifestyle in Hong Kong, Macao and Taiwan will remain unchanged. Hong Kong was greatly influenced by the tradition of the British governance, Macao, by the tradition of the Portugal governance, Taiwan, by the practice of the "Three Peoples' Principles", and mainland continues to build socialism with Chinese characteristics. Hong Kong, Macao, Taiwan and mainland have their respective characteristics in various aspects such as politics, economy and culture. Secondly, four forms of rule of law will appear within the same country. According to the Hong Kong Basic Law and the Macao Basic Law, the system of laws in Hong Kong and Macao remain unchanged except the parts in contradiction with the Basic Laws which have been deleted, added or amended. The Hong Kong SAR has a common law system with the Constitution and the Hong Kong Basic Law as the

fundamental law, British laws as its basis and the legislation and case law both deemed as formal sources of law. The Macao SAR has built a civil law system based on the Portugal statutory laws through localization of laws. In Taiwan, a civil law system with the characteristics of Chinese laws has been built on the basis of the legal governance practice in the ROC during the past century after the Revolution of 1911. And in mainland China, a socialist system of laws has been built. With the different systems of laws and practice of legal governance under different social systems and the granting of the power of final adjudication to the SARs by the Central Government, four independent jurisdictions of legal governance will appear in Hong Kong, Macao, Taiwan and mainland China. Thirdly, a situation of peaceful competition between the social systems will appear. Under the background of reunification of Taiwan, Hong Kong, Macao and mainland, the integrity of state sovereignty and territory and the national security will be safeguarded with great power, the four regions will explore new mechanism to harmonize the coexistence of executive, judicial and legislative powers while sharing the common sovereignty. And in economic field, it will become the major task for the four regions on both sides of Taiwan Strait for a long period of time in the future to remove market barriers, integrate market resources, realized complementary advantages and carry out peaceful competition.

III. The implementation of the “One Country, Two Systems” policy and the constant improvement of the structure of state powers

In some sense, the process of peaceful reunification of China is also the process for the state structure of “One Country, Two Systems” to be formed and constantly improved. The enactment and implementation of the Hong Kong Basic Law and the Macao Basic Law, the successful practice of the “One Country, Two Systems” policy and a high degree of autonomy in Hong Kong and Macao indicate that the state structure of “One Country, Two Systems” has already been formed. The new problems faced during the implementation of the Basic Laws such as the case of Hong Kong children’s residence right, the power of the court of final appeal in interpreting the Basic Law and the issue regarding the space for Macao’s development and its diversified economy indicate that the state structure of “One Country, Two Systems” will be constantly improved with the continued practice of the “One Country, Two Systems” policy. The taking effect and gradual extensive implementation of the Hong Kong Basic Law and the Macao Basic Law symbolized the formal birth of the state structure of “One Country, Two Systems” and its recognition in the society. Meanwhile, we must admit that the Question of Taiwan has not been resolved completely. Although the communication and exchange between the two sides of Taiwan Strait have been constantly expanded with the realization of Three Linkages, there still exists doubts regarding the “peaceful reunification and One Country, Two Systems” in Taiwan, in both government and in society. And the voices of disagreement are also heard in Hong Kong and Macao; further, new situations and new problems will certainly appear in the future as the practice of the “One Country, Two Systems” policy is a long historic process. On the historic journey towards reunification of motherland, the updated illustration of such state structure based on the constitutional theory is greatly needed regarding to the way of constructing and improving the state structure of “One Country, Two Systems” and increasing public trust and the persuasiveness of such structure so as to make such structure better serve the realization and safeguarding the reunification of our country.

3.1 The theory of "One Country, Two Systems" structure of state powers is a new topic for the science of constitutionalism

The successful practice of the "One Country, Two Systems" policy has expanded the traditional research area of constitutionalism. The academic research of the practice of the "One Country, Two Systems" policy will undoubtedly promote the development of constitutionalism. The theory of "One Country, Two Systems" structure of state powers has become a new academic category for the science of constitutionalism. Since modern times, the values required for the constitutionalism such as protecting human rights, rule of law, judicial independence, separation of powers and checks and balances have helped to keep powers under the framework of rationality to be of the people, and to prevent powers from turning into the tools for authority and autocracy, and have become the general values for rule of law accepted by more and more countries. The "One Country, Two Systems" structure of state powers can not contradict with the basic principle of constitutionalism. On the other hand, the "One Country, Two Systems" policy is the most significant social practice in the process of the great cause of the reunification of China, and it is also an unprecedented innovation in the history of social development of mankind under the background of peace and development. This great practice cannot proceed without the guidance of scientific theory. On the one hand, the reunification will be realized without damaging the existing achievements by respecting different life styles and social systems and keeping their respective track of development,; on the other hand, the "One Country, Two Systems" principle has been developed into a theory of reunification and state governance with the return of Hong Kong and Macao, the successful practice of the "One Country, Two Systems" policy, the theoretical discussions of the problems emerging in such practice by the scholars on both sides of Taiwan Straits and their academic experience accumulated in this process. There will be constant new problems regarding the development of the "One Country, Two Systems" structure of state powers requiring the scientific and persuasive elaboration based on the theory of constitutionalism. What is the theoretic basis and development vision for the "republic of systems" in a sovereign state with socialism and capitalism coexisting with each other? According to the official interpretation of the "One Country, Two Systems" principle, there are not only four legal systems within the same sovereign state, but also four judicial powers of final adjudication. Is the grant of power of final adjudication a defect of the integrity of sovereignty since the sovereignty should include executive power, legislative power and judicial power? Does the proposal that Taiwan could keep its own military force in the implementation of the "One Country, Two Systems" policy with respect to Taiwan comply with the spirit of reunification? Will the overall practice of the "One Country, Two Systems" policy in Hong Kong, Macao and Taiwan lead to the final dissolution of the unitary state structure? The both sides of Taiwan Straits have agreed on the final reunification of China, then which structure of state powers could be counted as "reunification"? Or what is the symbol of the "reunification"? So, the "One Country, Two Systems" structure of state powers has posed brand-new topics for the science of constitutionalism.

3.2 Consensus on constitutionalism is the important safeguard for the formation and improvement of the "One Country, Two Systems" structure of state powers

The most important element in the development of the "One Country, Two Systems" structure of state powers is to provide persuasive theoretical explanation of such structure with the basic theory of constitutionalism, to promote the birth of constitutional theory of "One Country, Two

Systems” and to help both sides of the Taiwan Straits to reach consensus as soon on the constitutionalism of the “One Country, Two Systems” principle. Firstly, to have complete, objective and scientific understanding of constitutional issues during the practice of the “One Country, Two Systems” policy is one of the basic qualities of Chinese scholars and a kind of academic conscience. The theory of “One Country, Two Systems” include the meaning of republicanism, the practice of the “One Country, Two Systems” policy has significant impact on various social aspects in Hong Kong, Taiwan Macao and mainland such as political, economic, cultural and legal aspects, further, the actual problems confronted with in the practice of the “One Country, Two Systems” policy depend on the constant attention and theoretical explanation by scholars, and on the exploration, examination and development of the constitutional theory of “One Country, Two Systems” in practice so that the constitutional theory of “One Country, Two Systems” is harmonized with the actual practice. Secondly, the principles of “peaceful reunification and “One Country, Two Systems” also requires the government administrators to have qualities of constitutionalism. After the liberation of mainland, the leaders of CPC quickly changed their position of resolving the Question of Taiwan with force into peaceful reunification, and later the idea of “One Country, Two Systems” was also proposed, Hong Kong and Macao were returned and high degree autonomy was successfully practiced. All these processes indicate that the leadership of CPC has political wisdom, foresight and sagacity. In contrast, the Lee Teng-hui authority in Taiwan and Chen Shui-bian administration acted perversely by advocating Taiwan independence. The quality of the administration in constitutional governance is a significant factor for the development and improvement of the “One Country, Two Systems” structure of state powers. Although the current practice of two-party system in Taiwan has brought stability and development in the society and has been recognized in the world, the parliamentary violence and snobbery towards the United States and its western allies are still the fatal flaw for Taiwan’s self-reliance and self-improvement. Since the reform and opening-up in mainland, there has been great improvement in building the democratic politics and people’s life has been improved constantly. The process from rejecting the idea of human rights to recognition of it in the constitution, from poor rule of law to the basic development of the socialist system of laws, from the rejection of separation of powers to the proposal of checking the powers has indicated that the universal idea of constitutionalism has been officially accepted in mainland and the building of rule of law in mainland itself is not going very smoothly. Although the building of rule of law in the Hong Kong SAR is relatively mature, its governing philosophy and thinking under common law tradition still need to be coordinated and communicated with that in mainland under the tradition of statutory laws. The Macao SAR has just started building its rule of law after its return, and it still needs further exploration in choosing its own path of development, realizing the development of its diversified economy and reinforcing goal of the long-term stability and prosperity as set up in the Basic Law. It can be concluded that the peaceful competition between the two systems under the “One Country, Two Systems” policy has started in the contemporary China, so the quality of ruling party in constitutional governance is significant for shouldering the responsibility of developing and improving the structure of state powers. Thirdly, from the social perspective, reinforcing the communication and exchange, increasing mutual trust and promoting common ground is a gradual historical process. The ruling might well design various paths of development, only the one which can bring actual benefits to the society and protect the peaceful development of society complies with the direction of the social development, can endure the examination by the practice and history and can be finally accepted by

the society. Therefore, the expansion of communication and exchange among Hong Kong, Macao, Taiwan and mainland, the deepening of their economic cooperation and mutual benefit will certainly improve the mutual understanding and mutual agreement. Thus, a gradual formation of national agreement on the constitutionalism of "One Country, Two Systems" through comparing and distinguishing the four forms of social governance within China is the core element for the development and improvement of the "One Country, Two Systems" structure of state powers. Any obstacles which prohibit the social and cultural exchange and cooperation between Hong Kong, Macao, Taiwan and mainland will damage the great cause of peaceful reunification, hamper the formation and development of the "One Country, Two Systems" structure of state powers in China and delay or even ruin the great rejuvenation of the Chinese nation. Fourthly, from the perspective of the experience of globalization, the countries which practice constitutionalism have stepped on the path of stable development. For example, in the United States, there is a trend of centralizing the powers by the federal government in recent years, however, such centralization of powers is not against Montesquieu's principles of separation of powers and checks and balances, and the supreme power of the state is separated into legislative power, executive power and judicial power and there are checks and balances between the powers. In the United States, the federal supreme legislative power lies in the congress composed of a senate and house of representatives, and such power is obviously increased than that under unicameral system under confederation. Various powers which belong to each state now belong to the federal congress. The congress has legislative power in areas such as rectifying treaties, taxation, coining currencies, postal service, trade, military service, foreign affairs, war and suppressing the revolts. The executive power belongs to the president who is the head of the state and chief executive of the federal government, and also the commander-in-chief during the war. The president has right to veto the legislature made by the congress (which can then be overturned by 2/3 majority votes by congressmen). The president also enjoys certain judicial power of preventing the misuse of discretion by the judges. The supreme judicial power belongs to the Supreme Court. The justices in the Supreme Court are appointed by the president with the approval of the congress. The justices remain in office for life if they act properly. The Supreme Court functions as a coordinator of the legislature and the orders of the president and of the legislation and judicial practice. Further, the Supreme Court can also rule on the constitutionality of the federal legislature. So, the supreme federal powers in the United States are clearly separated into the above three powers, and there are checks and balances between such three powers, which helps to prevent the powers of central government from being centralized into autocracy. In contrast, the drastic change in east Europe is a bad example. The democratic centralization evolved into authority and autocracy, which led to the change of public powers and the final fall of the state. So, the cultivation of the quality of constitutionalism is a key issue in forming the "One Country, Two Systems" structure of state powers.

In summary, any structure of state powers will lead to the alienation of powers and deterioration of powers if it deviates from the basic principle of constitutionalism. The agreement on constitutionalism is very significant to ensure the nature of "for the people" of the state structure and to keep the reunified country on the track towards rule of law, stability and order.

3.3 Common interest is the determinant for the constant improvement of the "One Country, Two Systems" structure of state powers

During the thousands years of historic change, Europe has experienced constant wars and

frequent changes of political powers with the unified empire built by means of war and its separation due to fightings of interests from time to time. And the contemporary Europe has experienced a turn in its situation: France and Germany have cooperated with each for over 50 years, no war has occurred between Germany and the Soviet Union, the western Europe was united, and the western and eastern Europe have been coexisting with each other peacefully for a long period of time and have experienced stability. Since the recent decades, the process of European integration develops rapidly and there appears a great trend of unification and union. The European Union (EU) has become a polar in the new world structure playing significant roles and having great influences.⁴ Economically, the European integration has reinforced the economic ties between the European countries and increased the economic competitiveness of EU towards the outside world; politically, it has increased the influence of the member states of EU in the world suppressing the attempt of the United States to create a single-polar world. The close economic tie helps the member states of EU to assimilate with each other culturally promoting the communication and development of the world culture. The European integration does not only actually safeguard the security of Europe, but also promote the mutual assimilation and harmonization of the economies of various European countries and help to maintain the world peace and security.

The *Articles of Confederation*, the first constitution of the United States was drafted in the Continental Conference in 1777 and ratified by every states in 1781. It stipulates very clearly: the state structure of the United States is confederacy, that is, the thirteen states enjoy sufficient autonomy. Each state can issue its own paper currency and levy taxes, and can enter into trade treaties with foreign countries and retain its own army. A Chairman, instead of President was established for the confederation conference whose power can only be exercised through each state government. The confederation conference have no power to make decisions, instead, it can only act with the approval of 9 states out of 13, even relating to national matters such as constitution, finance, war and peace. With the development of capitalist economy and the aggravation of the class struggle, the American capitalist class began to feel more and more deeply the problem of allocation of powers between the confederation and the states. Too much autonomous power by the local governments and too weak central government were not good for the stability and development of the entire country. If the United States had stuck to the *Articles of Confederation* strictly and let each states have their own ways, the whole country could have not prospered; what's more the independence which had been gained through struggle would have also be lost. The cruel reality forced the United States to give up confederation system and adopted federal system with state powers more centralized. The *United States Constitution of 1787* provides that the state structure of the United States is federalism instead of confederacy. Each state still enjoys autonomy, but they do not have complete independence, they are integrated parts of the federation. Each state is prohibited from entering into allies with other states or foreign countries, nor can they keep their own military force. The American confederation was replaced by American federation, and the state powers were centralized and the United States was basically reinforced and stabilized.⁵

In their *Federalist Papers*, Hamilton, Madison and Jay pointed out that realization of union by an effective national government have many advantages, and it helps to: (1) safeguard the national security. National security involves foreign invasions, threatening, and domestic faction and insurrection. A strong and effective national government is the safeguard against foreign invasions and threatening because it can “devote the national resources and forces to the defence of any part,

which is done more easily, quickly than by state governments or separate members of confederation as the later lacks a system of coordination and agreement."⁶ On the other hand, a firm and effective national government will promote the coordination of interstate relationship and resolve interstate disputes, domestic faction and insurrection.⁷ (2) promote commercial development. Like agreement of political interests, the agreement of commercial interests can only be achieved through a united government.⁸ A uniform national government could get rid of the barriers and restrictions in interstate commerce, establish a uniform national market, realize unrestricted exchange of goods between states so as to promote the commercial development and prosperity. (3) increase government revenue. For example, a national government can expand import duty at little expense while this could be managed by each individual state or member of the confederation more costly.⁹ (4) reduce financial expenses. If each states unite under the same government, the whole national will only need to pay for the salary of public servants once while different state will need to pay for the salaries of the public servants repeatedly if each state is divided into several confederations, and as for the major departments, each such payment is as extensive as the payment maid by the national government.¹⁰ The United States will never be divided into many independent states which are jealous of each other and which can not tolerate each other nor communicate with each other; instead, it should establish a federal government to maintain such union and to keep it perpetually.¹¹ In other words, it is only by establishing an effective national government that the state unity and the liberty of people can be sufficiently ensured.

Should that be the same case for China after reunification? The unitary structure of state powers reflects the common interests of the Chinese nation including interests of the national security, economic interests, cultural interests and interests of development. It is the best choice to ensure the former life style and social system in Hong Kong, Macao and Taiwan remain unchanged, to keep the achievements there unharmed, to respect the road of development chosen by the people in such areas and to realize the complete peaceful reunification of our motherland through the "One Country, Two Systems" policy under the unitary structure of state powers in order to defend the common interests of Chinese nation and to rejuvenize of Chinese nation. The practice of the "One Country, Two Systems" policy in Hong Kong and Macao indicates that the structure of state powers in the practice of the "One Country, Two Systems" policy represents the common interests of various ethnic groups and various areas in China. Therefore, the further deepening of the understanding of the common interests of Chinese nation by all Chinese people, especially by people in Hong Kong, Macao and Taiwan will be the determinant for the universal recognition and constant improvement of the unitary state structure under the "One Country, Two Systems" policy.

IV. Conclusion

The proposal of "peaceful reunification and One Country, Two Systems", the issuance of various detailed policies and the successful practice of the "One Country, Two Systems" policy in Hong Kong and Macao make the unitary structure of state powers in China present obvious characteristics of the "One Country, Two Systems" policy: an up-dated combination of the principles of "One Country, Two Systems" and "unitary system". With the implementation of the "One Country, Two Systems" policy and the formation and constant improvement of the structure of state powers, the constitutional theory of "One Country, Two Systems", especially the theory of

“One Country, Two System” structure of state powers, the quality of constitutionalism of the administrators, the social agreement on constitutionalism and the understanding of the common interests will all play important roles. Among all these factors, the understanding of common interests will determine the final improvement of the structure of state powers with the characteristics of the “One Country, Two Systems” principle.

Notes:

- ¹ Hamilton, A., J. Madison and J. Jay (1982) *The Federalist Papers*. New York: Bantam. 2.
- ² Zhang Haiting (2002). Federalism or Unitary System: Opposed or Unified? *Hebei Law Science*. Volume 5.
- ³ Dai Yi (1999). On Unity and Division in the History of China. *China Nationalities Education*. Volume 2. 22-24.
- ⁴ Gao Nuan (2001). The Overall Elucidation on European History as a Whole. *Journal of Historical Science*. Volume 6.
- ⁵ Li Dezhi (1994). Evolution of Federal Structure and Characteristics of Power Concentration in the U.S. Federal Government. *Jilin University Journal of Social Sciences*, 1994, Volume 3. 73-76
- ⁶ Wang Liping (2000). *Federalism and the World Order*. Beijing: Peking University Press. 17-63.
- ⁷ *Ibid.*, 23.
- ⁸ *Ibid.*, 57.
- ⁹ *Ibid.*, 61.
- ¹⁰ *Ibid.*, 63.
- ¹¹ *Ibid.*, 8.