

# **On the “One Country, Two Systems” Factor in the Constitutional Soft Power of China**

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Starting from the late 1980s, a series of events including the drastic changes in Eastern Europe, the unification of Germany, the unraveling of the Soviet Union and the “Jasmine Revolution” in North Africa marked the gradual demise of authoritarianism. Western media thus turned their attention to China, boldly predicting at one point that the “authoritarian regime” of the Communist Party of China (CPC) would be the object of the next “Jasmine” revolution and labeling the various demonstrations on the Chinese Mainland as inklings of the “Chinese Jasmine Revolution”. However, such conclusion by Western commentators turned out to be premature. With the continuing reform and opening up in China, the path of socialism with Chinese characteristics will bring long-term security and stability. The practice of the “One Country, Two Systems” policy, which encompasses Hong Kong and Macao with implications for Taiwan, is an integral part of socialist development with Chinese characteristics and an important driver for China’s growing constitutional soft power.

## **I. Constitutional Quality is a Core Element of a Country’s Soft Power**

“Soft power” is a concept developed by the American scholar Joseph Nye in the early 1990s. He defined two aspects of the state power, i.e. the hard power and soft power. He believes that hard power means a country’s ability to coerce or induce with payments other countries to do what it wants them to do. A country’s soft power on the other hand is to attract rather than coerce others to want what it wants, which rests on the attraction of its culture, political values and policies. Specifically, it means a) the attraction of one country’s culture to other countries; b) its political system or values, especially those values reflected in a country’s internal politics and foreign affairs; c) foreign policies, the widely recognized legality and moral authority of its conduct in handling foreign relations.<sup>1</sup>

### **1.1 Different interpretations of soft power of the state**

There have been different interpretations of “soft power”. For instance, the Chicago Council on Global Affairs in its report – *Soft Power in Asia: Results of a 2008 Multinational Survey of Public Opinion* published in June 2008 defines the five pillars of soft power as economy, culture, human capital (or education, as human capital is chiefly determined by education), diplomacy and politics, with any one of them being a form of soft power in its own light. Chinese scholars Han Bo and Jiang Qingyong of Peking University believe that “the sources and conduit of a country’s soft power include: culture, political values, systems, foreign policy and overall quality and image of its citizens.”<sup>2</sup> Yet other scholars believe that soft power is contrasted with hard power. The latter

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means a country's economic and military capacity, which generally can be assessed by indicators of tangible and material resources. In contrast, soft power refers to the strength of a country that cannot be measured like tangible assets. It is the power reflected in human factors, i.e. the power of its societal system and culture as indication of its overall national strength.<sup>3</sup>

## **1.2 The contemporary relevance of soft power**

Joseph Nye in his paper "The Information Revolution and American Soft Power" points out the following trends:

- a) Economic interdependence will make the use of force increasingly difficult, as it will impair economic growth and financial interests of all involved;
- b) Transnational players – multinational corporations, non-governmental organizations or multistate alliances, even terrorist organizations – will become important forces in state preservation;
- c) Resurgence of nationalism makes the use of military force increasingly more difficult;
- d) Advancement of technology, especially strategic imbalances in the distribution of nuclear and regular weapons, makes the United States homeland part of the battleground;
- e) Changing international politics make military force increasingly inadequate in solving today's predicaments; the most powerful armies are incapable of solving the problems of poverty, pollution and epidemics.

Therefore, it is no longer possible for the world's most powerful country to achieve its core global objectives on the merit of its own might, as the Roman Empire had done. Soft power will have to play an increasingly more prominent role.<sup>4</sup>

## **1.3 Constitutional quality is a core element of a country's soft power**

The different views on soft power discussed above share one common point, i.e. constitutional quality is a core element of a country's "soft power". Joseph Nye believed that from the perspective of soft power, the reason for America's powerlessness is its cultural superiority, its ennoblement of freedom and democratic ideals and its social and political institutions that safeguard these ideals.<sup>5</sup> Chen Xianchu pointed out institutionalized soft power is a more important form of soft power. The structural reform and development of a country's political institutions are often determined by its constitutional values. Deng Xiaoping in reviewing the lessons of China's decade-long "Cultural Revolution" pointed out, "Questions concerning systems are fundamental, holistic, persistent and long-term."<sup>6</sup> He said in reference to the basic policies adopted at 3<sup>rd</sup> Plenary Session of the 11<sup>th</sup> National Congress of the CPC, "Concerning our domestic policies, there are two most important points: one is development of democracy in politics and the other is reform in the economic sphere, as well as corresponding reforms in other areas at the same time."<sup>7</sup> He added, "The important thing is that our political structure does not meet the needs of the economic reform. When we first raised the question of reform, we had in mind, among other things, reform of the political structure. Whenever we move a step forward in economic reform, we are made keenly aware of the need to change the political structure. If we fail to do that, we shall be unable to preserve the gains we have made in the economic reform and to build on them, the growth of the productive forces will be stunted and our drive for modernization will be impeded."<sup>8</sup> In April 2006, President Hu Jintao said in his speech at Yale University, "Without democracy, there would have been no modernization." "We will vigorously promote social and economic development, protect people's freedom, democracy and human rights according to law, achieve social equity and justice and enable the 1.3 billion Chinese people to live a happy life." In March 2007, Premier Wen Jiabao said at a press briefing during the National People's Congress (NPC), "Democracy, legal system, freedom, human rights, equality and fraternity are not something peculiar to capitalism. Rather, they are the common achievements of civilization made in the long course of history and the common values pursued by entire mankind."<sup>9</sup> Therefore, constitutional quality is a core element of a country's soft power.

## II. Several Factors Determining Constitutional Soft Power

In the context of modern constitutional theories, constitutionalism is the basis of the fundamental guarantee of a country's soft power and provides a theoretical and moral compass for the organization and operation of government organs, and by extension the fundamental institutional foundation for a country's economic, cultural and social development. If a country's constitution is only to maintain an authoritarian government, its constitutional soft power will be fragile, negatively affecting its overall strength. In this light, what are the basic factors that determine a country's constitutional soft power, or how can a country's constitutional soft power be assessed? In examining constitutional norms of countries around the world, the following elements are worth our attention:

### 2.1 Security of the state territory and sovereignty

In examining a country's constitutional form, it is necessary to first verify its sovereign unity and territorial security. If a country is subject to disintegration and external threat, significant constitutional development will be difficult. Many scholars have overlooked this basic prerequisite in their discussion of constitutional development.

When the Republic of China first came into being, it was embroiled in an utterly chaotic situation. On 1<sup>st</sup> January 1912, Sun Yat-sen was sworn in as Provisional President in Nanjing. The nascent republic was confronted with the direct threat of northern warlords rallied around Yuan Shikai, in addition to the lingering forces of the Manchu empire whose emperor was yet to abdicate. The republican government encountered tremendous fiscal and military challenges as well, despite support pledged by 17 independent provinces. According to recollections by Hu Hanmin, when he obtained approval from the Provisional President for appropriation of 200,000 Yuan from the Ministry of Finance for the republican troops fighting a desperately undersupplied battle in Anhui, he was told, with the presidential order in hand, that the new republic's coffers only had ten silver dollars left.<sup>10</sup> In order to keep the new republic buoyant, the provisional government in Nanjing was compelled to issue government bonds and military vouchers, seek loans from private lenders and the Sino-Russian Bank, and sell interests in the state-owned Hanyeping Coal and Iron Mines Company, the China Merchants Steamship Company and Jiangsu and Zhejiang Railways. These measures however mostly were resisted, protested against and eventually aborted.

When Yuan Shikai took over the presidency of the republic, its dire financial situation remained fundamentally unchanged. As G. E. Morrison who served as Yuan Shikai's political advisor wrote in his diary, "The only news I heard about China's fiscal situation was that for the first six months of 1913 its revenues were only 51 million Yuan while expenditure 168 million Yuan, with a deficit of 117 million. 18 million out of the 51 million in revenues were receivables owed by the provinces to the central government. Of this, only two million were actually collected. If the situation continues, the government will have to declare bankruptcy."<sup>11</sup> Following the Wuchang Uprising, military strongmen took over control of many provincial governments, declaring independence and retaining tax monies due to the central government. Neither Sun Yatsen nor Yuan Shikai could do anything to remedy the situation. Serious contention erupted between Prime Minister Tang Shaoyi and his cabinet, the legislative assembly and the President over arrangement of loans from a Belgium bank and the so-called reorganization loans from a variety of foreign banks as solutions to the fiscal crisis.

In addition, the new republic was also bogged down in diplomatic quagmire when various nations laid down claims akin to blackmail for their recognition of the new republic. According to recollections by Cao Rulin, "This was precipitated by Mr. Sun Yatsen's call for nullification of all past unequal treaties and the damage to some Japanese stores in Beijing, incurred by No. 3 battalion in the midst of a mutiny, which then demanded compensation." "President Yuan also demanded renegotiation of the

treaties given the change in government. However, the foreign nations insisted on recognition of all their treaties and agreements with the Qing Government as precondition for their recognition of the republican government. This resulted in a prolonged stalemate. Then Russia demanded recognition of independence of Outer Mongolia, the United Kingdom requested autonomy for Tibet, and Japan demanded the right to construct a railroad through the three provinces in China's northeast.<sup>12</sup> Beset by domestic troubles and external challenges, the republican government was further paralyzed by multiple political parties vying for power and resorting to means of bribery, intimidation, etc.

China's modern history starting from the late Qing Dynasty has taught the Chinese people a profound lesson: constitutional government and the enhancement of the nation's soft power are only possible under the condition of national unity and security.

## 2.2 Recognition of universal values

Universal values form the core of constitutionalism. A government without a clear set of values driving its goal will be void of a soul. Given the trend of globalization, "universal values not only provide a converging point and common ground for the values that the greatest number of human beings in a vast majority of places and situations, at almost all times, do in fact hold in common, but also enable nations to face the challenges of environmental problems, population growth, poverty, terrorism and deprivation in contemporary societies. They reflect the positive, uplifting and persistent aspirations of humankind."<sup>13</sup> The affirmation of such universal values in a country's constitution or constitutional document not only indicates its value orientation in governance, but also predicates its open-minded approach to integration into the international community and valiant determination to keep up a positive national image.

Universal values in the context of constitutionalism are rooted in the humanity's perennial quest for the desired society over the millennia. There has been a plethora of theories and social practices for the desired society in both China and around the world since antiquity. They include the notion of social contract from the era of Enlightenment, the ethical society in ancient oriental philosophy, rule by the virtuous sage of old, and political democracy of today. There is a high degree of commonality of values embedded in these notions and practices despite their apparent differences. To deny that universal values exist is to ignore ubiquity of humanistic concerns. With regard to humanistic concerns, Marxist theory was focused on realizing uninhibited human development while Enlightenment thinkers based their discussion of democracy and the rule of law on liberty, equality and fraternity as basic human needs. Therefore, the commonality in human nature determines the irrefutability of universal values. Because of this, constitutionally more advanced Western countries all have adopted constitutions embodying universal values, in affirmation of their ubiquity.

The essence of the *Magna Carta* of 1215 was to limit king's powers and protect individual freedom. According to its clauses, the king was required to protect the freedom of the English Church, and the rights of barons and knights and of their heirs to title inheritance; not to charge excessive feudal relief against regulation; not to charge succession duty against regulation; not to levy, without agreement by the "common counsel of our realm" consisting of barons, clergy and knights, any aid or scutage; not to interfere in the feudal administration of justice; not to arrest or imprison any freemen or confiscate their property without trial by the feudal court. Other clauses include recognition of liberties of the City of London, protection of freedom of commerce and establishing uniform standards of measure. The *Petition of Right* of 1628 contains restrictions on a) non-Parliamentary taxation, b) imprisonment without cause, c) forced billeting of soldiers, and d) use of martial law during times of peace. The *Habeas Corpus Act* of 1679, the *Bill of Rights* of 1689, and the *Succession to the Crown Act* of 1707 laid the initial foundation for Britain's capitalist political system. Later, this capitalist constitutional system was further improved upon through a series of legislative acts including the *Parliament Acts* of 1911 and 1949, the *Representation of the People Act* of 1918, the *Representation of the People (Equal Franchise) Act* of 1928, the *Statute of*

Westminster of 1931, the *Representation of the People Act* of 1949 and 1969, and the *European Communities Act* of 1972. Collectively, they have defined the British political system, i.e. a constitutional monarchy, the bicameral parliamentary system, the principle of parliamentary supremacy, cabinet system, two-party system and the rule of law. The underlying principle evolved from "a limited monarchy and individual liberty" to "balances and checks and protection of human rights".<sup>14</sup> The *Declaration of Independence* adopted on 4<sup>th</sup> July 1776, a constitutional document of the United States, stated, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." The *Declaration of Human and Civic Rights* of 1789, the constitutional document of France, stated, "The representatives of the French People, formed into a National Assembly, considering ignorance, forgetfulness or contempt of the rights of man to be the only causes of public misfortunes and the corruption of Governments..." People are born with rights to liberty and equality. Any political organization should aim to uphold people's natural and inalienable rights. These rights include those to liberty, property, safety and rebel against oppression. A society that does not guarantee and affirm these rights has no constitutional basis.

Reviewing constitutions and constitutional documents of countries around the world, we may conclude without difficulty that the basic elements of universal values include human rights, liberty, equality, democracy and fraternity. Without the basis of these fundamental values, a country's constitution would deviate from the path of the rule of law and democratic politics.

### **2.3 Reverence for the rule of law**

In ancient Greece, the repeated setbacks to the rule by man based on Plato's notion of the "philosopher king" gave rise to Aristotle's utter despair over irrationality of man and his abandonment of the notion of rule of man. Shirk off his teacher's influence, Aristotle proceeded from the political reality and advocated for the rule of law, rejecting the possibility of the ideal man and rule of man. He stated, "The rule of law is better than rule by any individual." His notions include:

First, the rule of law appeals to humanity's sense of justice while rule of man does not. Men are equal by nature and should be given equal rights as they are of equal value. Government that does not give any advantage to the ruler and a system whereby the power to rule is shared by and benefits all conforms to the principles of equality, justice and moderation. Government by rotation is in keeping with natural law; a city-state under such a government that rules in accordance with the principles of justice and serving the common good is just, while a city-state under a ruler who acts out of his own interest is unjust and unequal. The constitution for government by rotation is the basis for the rule of law.

Second, the collective wisdom of many is greater than that of one man or a few. As the rule of law means governance by laws that are formed by many, it is therefore the rule by many. Letting many have more power is just. Even though not every man is necessarily good, collectively multitude is better than the few.

Third, while people are swayed by passion and desires, law is based on rationality.

Fourth, laws are stable and unequivocal. Aristotle believed that all established laws had the consent of all, which should have been good laws enacted for the common good. Such good laws are the premise for the rule of law. The supremacy of law is a necessary marker of Aristotle's ideal state. It requires law biding on the part of all citizens, their associations and holders of government offices, none of whom should have the privilege to be exempt. Law is the basis for social order and regulates public life in a state under the rule of law. It has supreme authority and hence is enforceable throughout the society.<sup>15</sup>

The rule of law is the only viable path for human society to defend justice, protect human

rights and construct a society of liberty, equality, democracy and fraternity.

#### **2.4 Ensuring checks and balances of power**

One of the core concerns of constitutional theories is the organization and function of state power. The theory for separation of powers has become a commonly recognized guide for constitutional government. Montesquieu first divided the state powers into legislative, executive and judicial powers. Legislative power is the power to formulate, amend or repeal any laws, which belongs to all people and be exercised by their elected representatives. Executive power is the power to execute the law, including the power to deal with foreign countries, i.e. to make peace or war, dispatch or receive envoys, and the power to protect public safety and repel invasion. The judiciary has the power to determine punishment for crimes and arbitrate private disputes, which should be exercised by those selected from among the people at certain intervals in manners prescribed by the law, i.e. in courts consisting of such selected people. The judiciary must be independent and the three powers should be separate from each other, without which the liberty and equality of the people could not be guaranteed. Montesquieu further believed that if the legislative and executive powers were exercised by one man or the same body of men, liberty would cease to exist. If the judiciary and the legislative powers were combined, citizens' life and liberty would be subject to despotism when the judge was also the lawmaker. If the judiciary and executive powers were combined, the judge would have the power of coercion. If the three powers (lawmaking, execution of public decisions, and judging over crimes and private disputes) were all exercised by one man or a single body of men consisting of the luminaries, noblemen and citizens, then all would be doomed.

The Montesquieu theory for *trias politica* and checks and balances not only had a huge impact in continental Europe, but also directly influenced the forming of the American political system. It was precisely by following his political theory that the founding fathers formed the structure of the federal republic.<sup>16</sup> The Montesquieu theory of separation of powers became a basic theoretical guide for the organization of the modern state. In the context of Western constitutional practice, checks and balances between the branches of government is the institutional guarantee for the quality of governance. Such checks and balances function at two levels: a) the horizontal division, checks and balances of powers, i.e. the checks and balances between the legislative, executive and judicial powers, with the legislative reflecting democratic aspirations, the executive embodying clean and efficient administration, and the judiciary exercising independent and impartial judgment; b) division, checks and balances of powers between central and local governments. Countries such as the United Kingdom, the United States, France, Germany and Japan that are constitutionally more advanced have largely been able to maintain their basic stability over a long period and ensure steady social and economic development by scientifically instituted checks and balances of powers in government. For example, public administration in these countries could still function as usual even during crises such as the "Watergate Incident" or sex scandals embroiling the president or prime minister, and the resignation of the cabinet or dismissal of the parliament, unlike in authoritarian states where political strife often led to turmoil.

Constructing a governance structure with checks and balances according to the theory of separation of powers, drawing upon experiences of constitutional development around the world and proceeding from actual national conditions, has become a basic requirement for constitutional development of the modern state.

### **III. The Return of Hong Kong and Macao and the "One Country, Two Systems" Policy has Enhanced China's Constitutional Soft Power**

In the quest for a theoretical framework and practical model for national reunification, the

“One Country, Two Systems” policy, as a crystallization of the best of all notions proposed over the past half century for national unification, became the chosen path to secure China’s sovereignty and territorial integrity, and common development of, and people-to-people exchange between, Hong Kong, Macao, Taiwan and the Mainland. Further, it has also provided an impetus to the continuous constitutional development in China, with more than a decade of its practice in the Hong Kong Special Administrative Region (SAR) and the Macao SAR and the guidance of the Central Government in promoting the development of cross-strait relations.

### **3.1 The “One Country, Two Systems” policy has ensured safeguarding of China’s sovereignty and territorial integrity**

At present, the CPC is the ruling party of China. Under its leadership, the Chinese nation has greatly enhanced its profile in the international community and the People’s Liberation Army has effectively safeguarded China’s sovereignty and territorial integrity. Within China, Hong Kong and Macao have achieved widely acknowledged economic and social development through practicing a high degree of autonomy and the “One Country, Two Systems” policy since their return to the motherland. In addition, the CPC has led proactive efforts to improve cross-strait relations and establish the cross-strait “Three Linkages”, following the principles of “One Country, Two Systems” and peaceful reunification. With universal recognition of China’s sovereignty, its safeguard in the international context and the interchange within the sovereign state becoming a norm, China can be said to have achieved a level of national unification. Under such a condition of unification, two different societal systems peacefully coexist, which has provided an environment and a more open, practical perspective for China’s constitutional advancement.

### **3.2 The “One Country, Two Systems” policy as continuation of universal values in the contemporary times**

From the point of view of history, human rights, democracy, liberty, equality and fraternity have not been concepts peculiar to the West. First, in modern history, the wealth accumulation in the West was not an outcome of abiding by universal values, but rather as spoils of war and plundering. It can rightly be said the affirmation and exaltation of universal values did not come about until the advent of the 20<sup>th</sup> century.

Second, throughout the Chinese civilization of five-millennia, there has been a multitude of writings by Chinese philosophers of Confucian, Moist, Taoist and Legalist schools, not lacking in notions of humanity, liberty, democracy, equality and fraternity. The influence of Chinese civilization extended eastward, southward and westward. Not only Japan and Korea in Asia but also the entire Europe have been drawn at various times by its enchantment and attraction, which has influenced their social changes. During the height of the Tang Dynasty following the “Reign of Zhenguan”, known as the golden age in Chinese history, Chinese civilization flourished and became a pinnacle of world civilization. Its capital Chang'an became the largest city and the cultural center of the world. Its residents sported Persian costumes, ate Arabic pitas, enjoyed performances of Indian acrobats, and were entertained by liquor store attendants from central Asia. It was an era of great cultural diversity and harmony. It was during the Tang Dynasty, Chinese culture had the most extensive reach and most profound impact on the world. Because of its economic prosperity and flourishing culture, its neighbors gravitated to it in increasing measure. The number of tributaries was on the increase and they paid homage at increasingly shorter intervals. At the height of the Tang Dynasty, over 70 tributary states affirmed their vassal relations with China. In the succeeding Song Dynasty, it had 26 tributary states making a total of 302 tribute visits<sup>17</sup>, and in the Yuan Dynasty tributary 34 states and over 200 visits.<sup>18</sup> Beside the attraction of its prosperous economy and flourishing culture, efforts by the Chinese government at promoting external relations also mattered. On the one hand, dedicated government offices, such as the

“*Honglusi*” (Court of Diplomatic Reception) of the Song Dynasty, were set up to take charge of affairs concerning state guests from tributary states. On the other, envoys were sent overseas to promote Chinese culture. During the Tang Dynasty, envoys were sent to Japan for cultural promotion and monk Jian Zhen alone led six voyages to Japan. The Yuan court also pursued a proactive foreign policy and many diplomatic envoys were sent overseas to foster relations with surrounding countries during the reign of Shizu. The maritime expeditions led by Zheng He to the Western oceans during the Ming Dynasty further demonstrated the power of the heavenly empire. The government-sponsored expeditions were not only a show of strength, but also a form of cultural diplomacy to promote the image of liberty, equality, democracy and fraternity of the Chinese nation and, to a certain extent, had enhanced China’s soft power in those eras of yore.<sup>19</sup>

Concerning the question of China’s national reunification, the CPC put forward the principles of “One Country, Two Systems” and peaceful reunification. It has committed to keeping the western political system and way of life in Hong Kong and Macao unchanged, and promised that the existing social system guided by the “Three Principles of the People” and way of life in Taiwan will remain unchanged after the cross-strait reunification. These are intended to fundamentally ensure the steady development, prosperity and stability of Taiwan, Hong Kong and Macao, and prevent any great harm to human rights that may entail revolutionary changes to societal systems. In a certain sense, the “One Country, Two Systems” principle has carried forward and institutionalized universal values in the process of China’s peaceful reunification.

Moreover, 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”), the constitutional laws of the two SARs that affirm their residents’ rights, and the high degree of autonomy, also reflect affirmation of universal values by the “One Country, Two Systems” principle in both theory and practice.

### **3.3 The practice of the “One Country, Two Systems” policy is in conformity with the rule of law**

The agreements reached in diplomatic negotiations prior to the return of Hong Kong and Macao and China’s position on the Questions of Hong Kong and Macao were eventually all affirmed in legal documents and legislation. 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* (hereinafter as “the Sino-British Joint Declaration”) and 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* (hereinafter as “the Sino-Portuguese Joint Declaration”), the Hong Kong Basic Law and the Macao Basic Law and interpretations, acts and decisions by the NPC and its Standing Committee, the highest organ of the state government, concerning the questions of Hong Kong and Macao, together have formed the legal basis for the return of Hong Kong and Macao and their governance by the rule of law.

After the return of Hong Kong and Macao, their governance and handling of their relations with the Mainland, between themselves and with the international community have been based on the notion of the rule of law. The two regions have established respective legal systems, consistent with the SAR system defined by the state and the fundamental laws, i.e. the *Constitution of the People’s Republic of China* (hereinafter as “the Constitution”), the Hong Kong Basic Law and the Macao Basic Law. They have practiced a high degree of autonomy for more than a decade now. Their judicial independence and legislative democracy were effectively protected by the Central Government. Take the Hong Kong SAR for example. Its autonomy, the rule of law, and protection of human rights and liberty has all been realized under the framework of “One Country, Two Systems” and according to the Hong Kong Basic Law. This has been acknowledged not only by the

people of Hong Kong but also by the international community. The Central Government has respected its high degree of autonomy and has never interfered in the decision-making or policy implementation by the SAR Government. Hong Kong's executive administration, independent judiciary and system for ethical government remain intact and its tradition of the rule of law that existed before the handover continues to play a vital role.

A legal framework for the development of relations between the Mainland and Taiwan, Hong Kong and Macao has also emerged. The CEPA, ECFA and a host of regulations concerning interchange among the four regions across the strait have formed the basis of such framework. CEPA stands for the *Closer Economic Partnership Arrangement between Mainland and Hong Kong*. It was signed by the Chinese Vice Minister of Commerce and the Hong Kong SAR Financial Secretary on 29<sup>th</sup> June 2003 in Hong Kong, with an aim to promote joint prosperity and development of the Mainland and the Hong Kong SAR, and enhance their trade and economic relations with other countries and regions. It contains measures concerning trade in goods, place of origin certification, services liberalization and trade and investment facilitation.

Article 1 (Objective) of CEPA states, To strengthen trade and investment cooperation between the Mainland and the Hong Kong SAR and promote joint development of the two sides, through the implementation of the following measures: a) progressively reducing or eliminating tariff and non-tariff barriers on substantially all the trade in goods between the two sides; b) progressively achieving liberalization of trade in services through reduction or elimination of substantially all discriminatory measures; c) promoting trade and investment facilitation. Its Article 2 (Principles) states, the conclusion, implementation and amendment of the CEPA shall adhere to the following principles: a) to abide by the "One Country, Two Systems" principle; b) to be consistent with the rules of the World Trade Organization (WTO); c) to accord with the needs of both sides to adjust and upgrade their industries and enterprises and to promote steady and sustained development; d) to achieve reciprocity and mutual benefits, complementarity with each other's advantages and joint prosperity; e) to take progressive action, dealing with the easier subjects before the more difficult ones. By 2010, nine annexes to the agreement were signed between the Mainland and Hong Kong.

To promote joint prosperity and development of the Mainland and the Macao SAR, and enhance their trade and economic relations with other countries and regions, Chinese Vice Minister of Commerce and the Macao SAR Financial Secretary jointly signed on 17<sup>th</sup> October 2003 the *Closer Economic Partnership Arrangement between Mainland and Macao*. Nine annexes to this agreement were signed later.

To implement the *Outline of the Plan for the Reform and Development of the Pearl River Delta (2008-2020)*, the *Hengqin Island Overall Development Plan*, the CEPA and the supplementary protocols thereof, to promote closer cooperation between Guangdong and Macao; and facilitate scientific development in Guangdong and adequate diversification of Macao's economy, the People's Government of Guangdong Province and the Government of the Macao SAR signed the *Framework Agreement on Cooperation Between Guangdong and Macao* in Beijing on 6<sup>th</sup> March 2011. It covers such areas as general principles, joint development of Hengqin, joint development of industries, infrastructure and convenient border crossing, social and public services, regional cooperation plans, cooperation mechanisms and term of the agreement, implementation of the agreement, amendment, entry into force, etc.

The legal framework for the development of cross-strait relations has also evolved. Such relations were initiated following the affirmation of the 1992 Consensus and Wang-Koo Talks, which established a mechanism for cross-strait dialogue, and continue to develop following the rule of law approach. According to published data on the website of the Taiwan Affairs Office of the State Council, the national government has so far formulated 31 laws and normative documents spanning constitutional, economic, administrative, civic and commercial areas in connection with Taiwan. They include:

- *Constitution of the People's Republic of China,*
- *Anti-Secession Law,*
- *Law of the People's Republic of China On the Protection of Investment of Taiwan Compatriots,*
  - *Rules for Implementation of the Law of the People's Republic of China on the Protection of Investment of Taiwan,*
  - *Procedures for the Administration of Trade between the Mainland and Taiwan,*
  - *Provisional Procedures for the Supervision and Administration of Vessels Engaged in Direct Shipping across the Taiwan Strait,*
  - *Several Policy Measures for the Promotion of Cross-Strait Agricultural Cooperation and Measures to Benefit Taiwan Farmers, Measures for the Control of Chinese Citizens Travelling to or from the Region of Taiwan,*
  - *Provisional Procedures for the Administration of Registration of Marriages between Mainland Residents and Taiwan Residents.*

These statutory documents, together with a host of local legislations concerning Taiwan, have formed a legal framework for the harmonious development of cross-strait relations. In addition, a series of agreements for cross-strait economic and cultural exchanges have been signed since 1993, according to published data on the website of the Taiwan Affairs Office of the State Council. They include:

- *Cross-strait Nuclear Safety Cooperation Agreement*
- *The Joint Opinions by the Association for Relations Across the Taiwan Strait and Strait Exchange Foundation on Enhancement of Cross-strait Industrial Cooperation*
- *The Joint Opinions by the Association for Relations Across the Taiwan Strait and Strait Exchange Foundation on the Advancement of Consultation for a Cross-strait Investment Protection Agreement*
- *Cross-strait Cooperation Agreement on Medicine and Public Health Affairs*
- *Cross-Straits Intellectual Property Right Protection Cooperation Agreement*
- *Cross-Straits Economic Cooperation Framework Agreement*
- *Consensus of the Association for Relations Across the Taiwan Strait and Strait Exchange Foundation on Cross-strait Joint Prevention of Natural Disasters*
- *Cross-strait Agreement on Cooperation in Respect of Standards, Metrology, Inspection and Accreditation*
- *Cross-strait Agreement on Cooperation on Agricultural Product Quarantine and Inspection*
- *Cross-strait Agreement on Cooperation in Respect of Fishing Crew Affairs*
- *Consensus of the Association for Relations Across the Taiwan Strait and Strait Exchange Foundation on Mainland Investment in Taiwan*
- *Agreement on Cross-strait Mutual Assistance in Cracking Down on Crimes*
- *Supplemental Agreement on Cross Strait Air Traffic*
- *Agreement on Cross-strait Financial Cooperation*
- *Cross-strait Agreement on Postal Service*
- *Cross-strait Agreement on Direct Flights*
- *Cross-strait Agreement on Food Safety Cooperation*
- *Cross-strait Agreement on Direct Sea Transport*
- *Cross-strait Agreement on Travel of Mainland Residents to Taiwan*
- *Minutes of Talks on Cross-strait Charter Flights*
- *Cross-strait Agreement on Tracking Registered Mail and Matters of Compensation*
- *Cross-strait Agreement on Verification of Public Notary Documents*
- *Agreement on Mechanism for Communication and Meetings between the Association for*

### *Relations Across the Taiwan Strait and Strait Exchange Foundation*

#### *- Joint Agreement of Wang-Koo Talks*

These agreements, 24 in total, are indicators of the increasing mutual trust across the strait and an inevitable outcome of cross-strait commitment to the rule of law.

Reviewing the process of Hong Kong and Macao’s return to the motherland and efforts by the central government to promote peaceful reunification, we can easily see from the facts that the commitment to the rule of law underscores the entire historic process of implementing the “One Country, Two Systems” policy and achieving peaceful reunification.

### **3.4 The “One Country, Two Systems” policy as the “Chinese model” for separation of powers and checks and balances**

In order to safeguard human rights and establish a constitutional order that ensures liberty and democracy, there must be separation of legislative, executive and judicial powers, each defined by the nature of its power, within the government of a sovereign state, with constraints to ensure checks and balances of their functioning. In addition, there is also hierarchical order of powers within governments around the world. In a federal structure, the relationship between the federal and state governments is that between the national government and individual states. In a unitary state, it is the relationship between the central and local governments. Therefore, there should also be checks and balances to ensure the harmony in the relations between, and the functioning of, the governments at these two different levels.

For the Mainland China, Article 3 of the Constitution stipulates, “The state organs of the People’s Republic of China apply the principle of democratic centralism. The National People’s Congress and the local people’s congresses at different levels are instituted through democratic election. They are responsible to the people and subject to their supervision. All administrative, judicial and procuratorial organs of the state are created by the people’s congresses to which they are responsible and under whose supervision they operate.” The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and proactive actions of the local authorities under the unified leadership of the central government. Accordingly, most scholars on the Mainland hold the view that as powers of local governments on the Mainland come from central government authorization, so does the high degree of autonomy for Hong Kong and Macao. This view clearly has its legal basis. The Hong Kong Basic Law stipulates that the Hong Kong SAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central Government (Article 12). The NPC authorizes the Hong Kong SAR 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 (Article 2). The Macao Basic Law stipulates that the Macao SAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central Government (Article 12). The NPC authorizes the Macao SAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial powers, including that of final adjudication, in accordance with the provisions of this law (Article 2).

If we take a holistic view of modes of governance in China’s Taiwan, Hong Kong, Macao and Mainland in the context of the “One Country, Two Systems” principle, we may find that separation of powers and checks and balances already exist in the current political structure of China. First, the Hong Kong SAR and the Macao SAR, which come directly under the Central Government, have been granted executive, legislative and independent judicial powers, including that of final adjudication, by the provisions of the Hong Kong Basic Law and the Macao Basic Law. The practice of capitalist system by the two SARs and their “executive-led” government structures have apparent features of “separation of powers”. Second, since Taiwan adopted direct “presidential” election in 1996 and saw transfer of power to the former opposition party for the first time in 2000,

its constitutional development has been widely recognized. Despite its “Five-Power Constitution” being historically dated, as it has acknowledge publicly, and election fraud in two previous elections, the orderly completion of its 2012 direct election demonstrated again its achievement in democratic constitutional development. The Government of the PRC, which is internationally recognized, has effectively maintained sovereignty and territorial integrity of the entire state of China encompassing Taiwan through diplomatic and defense means. However, its influence over the functioning of government powers in Taiwan is extremely limited. Third, four legal systems relatively independent of each other exist respectively in Taiwan, Hong Kong, Macao and the Chinese Mainland, creating four different legal environments and political ecosystems. These four parallel constitutional ecosystems maintain mutually dependent and balanced relations guaranteed by the “One Country, Two Systems” policy, and are not subjugated to each other. Such a situation illustrates the smartness of the Chinese Government and wisdom of the Chinese nation. Fourth, with increasing economic ties and private exchanges between the four regions and across the strait, Hong Kong, Macao and Taiwan’s spillover effect on the Mainland in areas of the rule of law and constitutional government is evidently growing. According to information released by government websites on the Mainland, over the decade since China’s WTO accession, there has been increasing economic integration of the four regions. Although the percentage of trade and investment that originated from Hong Kong, Macao and Taiwan in the total volume of trade and investment of the Mainland has dropped vs. that in the early stage of China’s reform and opening up, the three regions remain important trade and investment partners of the Mainland. The Mainland on the other hand now has much more economic clout in Hong Kong, Macao and Taiwan, becoming currently their largest trade partner. Over the decade of 2000-2010, Taiwan’s accumulated trade surplus with the Mainland reached USD596.63 billion, making it the main source of its foreign currency reserve. Hong Kong is Mainland’s third largest trading partner, second largest export market, and destination of the largest volume of supplied goods. Taiwan is the Mainland’s seventh largest trading partner, the ninth largest export market and the fifth largest source of imports. Over the same decade, bilateral trade between the Mainland and Hong Kong, Macao and Taiwan had climbed steadily with the exception of 2009 when the world financial crisis caused a drop. The trade volume rose from USD89.2 billion in 2001 to USD378.2 billion in 2010, representing a 4.2-fold increase. According to data released on the website of Taiwan’s Mainland Affairs Council on 24<sup>th</sup> January 2012, both sides of the strait had concluded 16 agreements after the resumption of institutionalized cross-strait consultations, greatly improving cross-strait relations. There has also been a several-fold increase in the number of Mainland travelers to Taiwan. Take 2011 for example, over 1.72 million Mainlanders visited Taiwan, representing a five-fold increase over the number of 300,200 plus in 2008. As the saying goes, “Seeing is believing.” The exchange between the four regions and across the strait will definitely promote more attention by respective governments to the advancement of democracy and the rule of law and to winning the license to govern in their respective societies by creating better environment for constitutional governance.

Such relationship of checks and balances between the central and local governments or between different constitutional regions within a state is a new model for “checks and balances of powers”. The practice of such a model, in a certain sense, may have been the reason why China has been able to both avert the kind of tragedy that saw the unraveling of the Soviet Union and drastic changes in Eastern Europe, and weather the impact of the Jasmine Revolution in Africa and its ensuing constitutional upheaval. The Chinese nation, endowed with political wisdom, not only has secured peace and stability in the four regions and across the strait within China, accumulating valuable constitutional lessons and experience, but also is progressing in an orderly manner toward a liberal and democratic constitutional order by drawing upon achievements of political progress in the West.

## IV. Conclusion

A holistic pattern of China’s constitutional government consists of the Mainland’s reform and opening up and development of democratic political processes, Taiwan’s constitutional practice, the practice of “Hong Kong people ruling Hong Kong”, the “One Country, Two Systems” policy and a high degree of autonomy in Hong Kong, and the practice of the same in Macao, and especially the political reforms in Taiwan, Hong Kong and Macao. The interaction between the four regions and across the strait through closer economic ties, private exchanges and benchmarking legal systems has enabled tremendous achievement in the development of the rule of law in China as a whole. The “One Country, Two Systems” factor has become an impetus to the continuous enhancement of China’s constitutional soft power.

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