

A Study of the Political Structure of the Macao Special Administrative Region from the Perspective of Constitutionalism

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The present prosperity and stability of Macao proves to be another world wonder created by all Chinese people including those in Taiwan, Hong Kong and Macao, who have been making concerted efforts to promote common development of China's mainland, Taiwan, Hong Kong and Macao, and to realize the reunification of the motherland. What exactly are the factors which have helped Macao make such remarkable achievements that draw world-wide attention within a decade after it returned to the motherland? How to ensure long-term prosperity and stability of Macao? Many scholars and statesmen concerned with the future development of Macao are making theoretical explorations from varied perspectives, in the hope of getting new inspiration and enlightenment.

To analyze the achievements of Macao's political structure during the last decade from the perspective of the basic principles of western constitutionalism and to chart the blueprint for its future development may be regarded as the most significant one among all the theoretical explorations. We can make the preliminary conclusion that Macao has already stepped onto the track of constitutionalism after ten years' successful exploration since its return to the motherland.

I. Analysis of Macao's political structure from the perspective of constitutionalism

1.1 Principles on respecting and protecting human rights

Article 33 of the Constitution of the People's Republic of China (hereinafter as "the Constitution") stipulates that the state shall respect and safeguard human rights. According to Article 4 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China (hereinafter as "the Basic Law"), the Macao Special Administrative Region (hereinafter as "the Macao SAR") shall safeguard the rights and freedoms of the residents of the Macao SAR and of other persons in the Region in accordance with law. In addition, Chapter III of the Basic Law is dedicated to elaborating on the fundamental rights of Macao residents, which include right of equality, right to vote and right to stand for election, freedom of political persuasion, freedom of the person, right to judicial aid, right of human dignity, right of personal reputation and privacy, right of residential security, freedom and privacy of communication, freedom of movement within the Macao SAR and freedom of emigration to other countries and regions, freedom of religious belief,

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freedom of choice of occupation and work, freedom to engage in education, academic research, literary and artistic creation and other cultural activities, freedom of marriage, right of vulnerable groups, right to social welfare and so on. Those rights play an important part in respecting and protecting the human rights of Macao residents.¹

1.2 Principles on people's sovereignty

In accordance with Article 2 of the Constitution, all power in the People's Republic of China (PRC) shall belong to the people. The National People's Congress (NPC) and the local people's congresses at various levels are the organs through which the people exercise state power. The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law. Article 59 of the Constitution provides that the NPC is composed of deputies elected from the provinces, autonomous regions and municipalities directly under the Central People's Government and of deputies elected from the armed forces. All the minority nationalities are entitled to appropriate representation. According to the Constitution, therefore, Macao residents participate in administering state affairs and managing economic, cultural and social affairs through electing their own deputies. Macao residents not only participate in the election of the Macao SAR Government and the Legislative Council, but also select the deputies to the NPC from the Macao SAR to exercise their democratic rights to participate in the administration and discussion of state affairs.

1.3 Principles on power restriction

The constitutional political structure of the Macao SAR has been established. Chapter IV of the Basic Law provides an explicit stipulation, including "Section 1 The Chief Executive", "Section 2 The Executive Authorities", "Section 3 The Legislature", "Section 4 The Judiciary", "Section 5 Municipal Organs", "Section 6 Public Servants" and "Section 7 Swearing Allegiance", which demonstrate that the Basic Law outlines separation of the executive, legislative and judicial powers. Macao's political structure thus stipulated by the Basic Law deserves the name of "era classic", because such a structure is based on the actual conditions of China's mainland and Macao, and conforms to the trend of globalization of the rule of law. As a result, during the last decade, the Macao SAR has managed to administer in accordance with law and to administer scientifically, making Macao enjoy social stability and economic prosperity and Macao residents live in peace and comfort.

1.4 Principles on the rule of law

Macao's constitutional law system has been established which holds high the spirit of constitutionalism and takes the Constitution and the Basic Law as the supreme law. Article 8 of the Basic Law provides that the laws, decrees, administrative regulations and other normative acts previously in force in Macao shall be maintained, except for any that contravenes this Law, or subject to any amendment by the Legislature or other relevant organs of the Macao SAR in accordance with legal procedures. In accordance with Article 145 of the Basic Law, upon the establishment of the Macao SAR, the laws previously in force in Macao shall be adopted as laws of the Region except for those which the NPC Standing Committee declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the provisions of this Law and legal procedure.

Documents, certificates and contracts valid under the laws previously in force in Macao, and the rights and obligations provided for in such documents, certificates or contracts shall continue to be valid and be recognized and protected by the Macao SAR, provided that they do not contravene this Law. The contracts signed by the Portuguese Macao Government whose terms of validity extend beyond 19th December 1999 shall continue to be valid except those which a body authorized by the Central People's Government publicly declares to be inconsistent with the provisions about transitional arrangements contained in the Sino-Portuguese Joint Declaration and which need to be re-examined by the Macao SAR Government.

Apart from the 8 national laws to be applied in the Macao SAR listed in the Annex III to the Basic Law, by 15th May 2009, the Macao SAR, since its establishment, has passed 125 laws and 301 administrative regulations, totaling 426. 123 of them involve economy, 92 people's livelihood, and 211 government's organizational structure or other aspects.²

In accordance with Article 65 of the Basic Law, the Macao SAR Government must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Assembly and already in force; it shall present regular policy addresses to the Assembly; and it shall answer questions raised by members of the Assembly. Compared with the Macao governed by the Portuguese, Macao now enjoys social stability and economic prosperity and the residents live in peace and comfort, which to a large extent should be attributed to administration in accordance with law on the part of the Macao SAR Government. "Nine years after the resumption of sovereignty over Macao by China, the Chief Executive, Edmund Ho, together with the Government of the Macao SAR has managed to administer in accordance with law, zealous for progress, leaving Macao make progress in an all-round way and promoting successfully the practice of 'One Country, Two Systems'".³

1.5 Principles on judicial independence

In accordance with the Basic Law, the courts of the Macao SAR shall exercise the judicial power (Article 82); the courts of the Macao SAR shall exercise judicial power independently; they shall be subordinated to nothing but law and shall not be subject to any interference (Article 83); a judge may only be removed for inability to discharge his or her functions, or for behavior incompatible with his or her post, by the Chief Executive on the recommendation of a tribunal appointed by the President of the Court of Final Appeal and consisting of not fewer than three local judges (Article 87).

The Basic Law is instrumental in helping Macao make such great achievements within a decade, and the most important part is the underlying spirit of constitutionalism.

II. Evolution of the practice of Macao's constitutional political structure

Macao has witnessed innumerable great achievements after ten years' practice since its return to the motherland. However, to practice the "One Country, Two Systems" policy is a long-term great project and ten years' exploration can merely be regarded as the initial steps in the long march.

The open world, the changing trend of public opinion, globalization of economy and of the rule of law can all present new problems with the practice of the "One Country, Two Systems"

policy. In order to practice the “One Country, Two Systems” policy smoothly in Macao in the future, an objective analysis of latent problems in the light of the spirit of constitutionalism is required, and the political system and the legal system need to be perfected, so that the Macao SAR can advance with the times and enjoy long-term prosperity and stability.

2.1 Following the spirit of constitutionalism, carrying out and implementing the Basic Law in an all-round way

The spirit of constitutionalism which originates from the western practice of the rule of law has already become the inner driving force to boost globalization of the rule of law and keeps pushing forward the rule of law around the globe. Principles on human rights, people’s sovereignty, power restriction, the rule of law and judicial independence integrated by the spirit of constitutionalism remain the bottom line that cannot be avoided by the present rule of law. Sticking to the spirit of constitutionalism and perfecting the operation mechanism of the constitutional political structure of the Macao SAR may be the correct choice for providing Macao a better future.

The Constitution and the Basic Law laid a significant constitutional foundation for Macao’s long-term peace and order in the future. It’s worth noting that, in view of Macao’s unique historical tradition and social foundation, Macao stresses more on blazing new trails than on inheriting the traditions as compared with Hong Kong. Much still remains to be done in perfecting Macao’s operation mechanism of constitutional political structure, considering Macao’s social realities. Based on the successful experience from ten years’ practice, probing into Macao’s political reformation appropriate for economic and social development, under the guide of the spirit of constitutionalism and in accordance with the Basic Law, forms an integral part of keeping Macao prosperous and stable in the long run.

2.2 Carrying forward government reformation pragmatically, building a clean and efficient government

On 20th December 2009, President Hu Jintao met with the new heads of the Executive Authorities, Legislature and Judiciary of the Macao SAR, and made the following four suggestions to the Government of the Macao SAR: first, love the people, work for the people, firmly build and seriously practice the conviction of “People First”, and spare no effort to serve the people of the Region; second, unite as one, and coordinate people’s minds and efforts to maintain Macao’s long-term prosperity and stability; third, work diligently and efficiently, make policy-making scientific and democratic, perform effectively and powerfully, and keep raising governance level; fourth, be honest and upright, and lead the team of civil servants to build a clean government with your own exemplary actions.⁴

Executive-led system is the fundamental scientific arrangement, but it takes time and patience to decide on how to carry it out taking into account of Macao’s basic conditions. It must be pointed out that executive power predominates in the executive-led system, and once there is a lack of legislative supervision and judicial checks, autocracy, corruption and slacking will arise, bring harm to the people and jeopardizing social stability. The notorious corruption case that brought down Ao Man Long, former Secretary for Transport and Public Works of the Macao SAR, as was covered by the media in 2007, rings an alarm for the Macao SAR Government. The Central People’s Government together with all the Macao residents will wait and see how to build clean and efficient executive authorities in Macao.

The author believes that the Macao SAR Government, by adopting the consistently advocated criterion of "Government Ruled by law, Service-oriented Government" by the mainland, can work out a blueprint for its future government structure in an active yet prudent manner, in accordance with the principles of downsizing, efficiency and unity.

2.3 Straightening out the relation between executive power and legislative power, and that between executive power and judicial power in the executive-led system

The relationship between executive power and legislative power needs to be further studied in the executive-led system. "Executive-led" means that when it comes to the relationship between the Executive Authorities and the Legislature, the Chief Executive is in a higher constitutional and political position, with most of the policy-making power at the disposal of the Executive Authorities.⁵ In accordance with the Basic Law, the Chief Executive of the Macao SAR shall exercise 18 powers and functions, and the Macao SAR Government shall exercise 6 powers and functions. In addition, the Executive Authorities take precedence over the Legislature, and executive power predominates in the relationship between executive power and legislative power. Such an arrangement conforms to the unitary state structure of China, convenient for the coordination between the Central People's Government and the Macao SAR Government. Of all the presumptions, the most likely one is that such an arrangement contributes to the harmonious cooperation between the Macao SAR Government and the Central People's Government, and precludes Macao's executive power from becoming nominal power subject to the Legislative Council in all aspects.

As is pointed out by Lee Shing Chun, former Vice-chairman of the Basic Law Commission of the National People's Congress, executive-led plays a key role in the operation system of the Basic Law, the Macao SAR is no independent political entity, and the Macao SAR Government governs the Region in the name of the Central People's Government with the power granted by the Central People's Government, so Macao's executive-led system and the exercise of power granted by the Central People's Government accord with the provisions and the essence of the Basic Law.⁶

However, in such a system, the supervision over executive power by the Legislature is prone to be neglected. From the perspective of constitutionalism, the Legislature is intended for the expression and formation of the general will and it is vested with legislative power and supervision power. Thus, in implementing executive-led, it is imperative to maintain the austerity of executive power, or else it might raise a suspicion of executive power preceding legislative power.

The author considers that since the capitalist system remains unchanged in Macao for at least 50 years ahead, it is allowed to refer to western constitutional experience and to keep improving the political system of executive-led. Currently, western government organizations take such forms as presidential system, parliamentary system, half parliamentary and half presidential system, and directorial system.⁷ According to the Basic Law, 12 Legislative Council members are directly elected, 10 indirectly elected and 7 appointed. Legislative Council members appointed by the Chief Executive make up 24.1% of the Legislative Council. Such an arrangement will surely affect the full play of the Legislative Council's supervision over the Government and how to ensure the public foundation of the Legislative Council. Judging from the principle of "Power Separation, Power Balance" of constitutionalism, it is advisable to cut the Chief Executive's power in appointing some of the Legislative Council members in the arrangement of Macao's executive-led system, to gradually have the Legislative Council members directly elected through democratic

voting and to guarantee the relative independence of legislative power in relation to executive power, which is of great significance for improving the supervision function of the Legislative Council.

As for the relationship between executive power and judicial power, considering the real conditions of Macao's miniature society, it is relatively easy to establish social relations among executive officials, judicial officials and legislative officials, and the public power class of Macao will tend to form personal relations similar to the "acquaintance society" in the mainland at the basic level. In this case, provisions of the law turn out to be the precondition for guaranteeing the separation of the three powers. Most importantly, officials at all levels are supposed to have obtained basic constitutional training and public power morality, and to this end, the author suggests, with Hong Kong's ICAC as the pattern template, building in Macao a forceful supervision mechanism for a clean government and a transparent mechanism for power operation, so as to keep power operation on the right track.

2.4 Keeping up with globalization of economy and the rule of law, accelerating the pace for uniformity of the legal system

With the development of economic globalization and the appeal for economic diversity in Macao, it seems imperative to track globalization of the rule of law. At present, the Pearl River Delta development plan and Hengqin development plan have risen to national strategies. Whether Macao will succeed in improving its economic structure in the tide of economic development of the Pearl River Delta, to a large extent, depends on improving its legal system. Since its reform and opening-up 30 years ago, based on China's national conditions and on the request of globalization of the rule of law, China's mainland has met with initial success in constructing the socialist legal system. As the economic ties among Guangdong, Hong Kong and Macao become increasingly close, accelerating the pace for the reformation of the legal system in the fields of civil and commercial law, economic law, and criminal law, actively seeking maximum uniformity of the legal system with the mainland, eliminating the legal obstacles hindering economic cooperation and promoting the formation of a large Guangdong-Hong Kong-Macao market will be important tasks of the next Government of the Macao SAR.

III. Conclusion

To establish people-oriented public power which will never be subject to alienation and that alternates orderly is the everlasting ideal of man. Only in this way can the basic rights of man be safeguarded. The spirit of constitutionalism which originates from the western practice of the rule of law best corresponds to man's expectation for public power. Principles on human rights, people's sovereignty, power restriction, the rule of law and judicial independence integrated by the spirit of constitutionalism play a decisive role in keeping public power as it should be.

The Basic Law which laid a significant constitutional foundation for Macao's long-term peace and order in the future is instrumental in practicing the "One Country, Two Systems" policy successfully within a decade since its return to the motherland, and the most important part is the underlying spirit of constitutionalism. Based on the successful experience from ten years' practice, it is imperative to implement the Basic Law in an all-round way under the guide of the spirit of

constitutionalism, to probe into Macao's political reformation appropriate for its economic and social development in accordance with the principles of downsizing, efficiency and unity, to straighten out the relations between executive power and legislative power, between executive power and judicial power according to the principle of "Power Separation, Power Balance" of constitutionalism, and to boost the construction of the legal system with the aim of tracking globalization of the rule of law and promoting the development of economic diversity for carrying out the "One Country, Two Systems" policy with success in Macao in the future.

Notes:

- ¹ Ieong Wan Chong (2004). *The Interpretation of the Macao Basic Law*. Macao: Legal Affairs Bureau. 67-82.
- ² Chio Heong Ieong (2009). On the 10-year Legislation of the Macao SAR. *Academic Journal of One Country Two Systems (Chinese Version)*. Volume 1. 53-60.
- ³ Hu Jintao Commending the Government of the Macao SAR for Its Administration in Accordance with Law, Carrying Forward the Practice of "One Country, Two Systems" with Success. *Macao Daily News*. 20th December 2008. A03.
- ⁴ Hu Jintao's Four Suggestions for the New Government: to Love the People, to Work for the People, to Unite as One, to Work Diligently and Efficiently, and Be Honest and Upright. *Macao Daily News*. 20th December 2009. A03.
- ⁵ Wang Changbin (2009). My View on Executive-led after the Election of the Legislative Council. *Macao Daily News*. 18th November 2009. E06.
- ⁶ Lee Shing Chun: More Efforts to Promote the Development of "One Country, Two Systems". *Macao Daily News*. 24th December 2009. B03.
- ⁷ Han Dayuan (2003). *Comparative Constitution*. Beijing: Higher Education Press. 327-331.