

China Academic Library



Zhenmin Wang

Relationship Between the Chinese Central Authorities and Regional Governments of Hong Kong and Macao: A Legal Perspective



外语教学与研究出版社
FOREIGN LANGUAGE TEACHING AND RESEARCH PRESS



Springer

China Academic Library

This book series collects, organizes and presents the master pieces in contemporary China studies. Titles in this series include those by Chinese authors who studied and worked abroad during early times whose works were originally in English and had already made great impacts in the Western world, such as Hu Shi, Fei Xiaotong and others; as well as works by more recent authors, Chinese and non-Chinese, that are of critical intellectual importance in introducing and understanding the transformation of the modern Chinese society. A wide variety of topics are covered by the series, from philosophy, economics, and history to law, cultural geography and regional politics. This series is a key English language resource for researchers and students in China studies and related subjects, as well as for general interest readers. The book series is a cooperation project between Springer and Foreign Language Teaching and Research Press of China.

More information about this series at <http://www.springer.com/series/11562>

Zhenmin Wang

Relationship Between the Chinese Central Authorities and Regional Governments of Hong Kong and Macao: A Legal Perspective



外语教学与研究出版社
FOREIGN LANGUAGE TEACHING AND RESEARCH PRESS

 Springer

The Springer logo consists of a stylized chess knight (horse) facing left, positioned to the left of the word 'Springer' in a serif font.

Zhenmin Wang
School of Law
Tsinghua University
Beijing, China

Sponsored by Chinese Fund for the Humanities and Social Sciences (本书获中华社会科学基金资助)

ISSN 2195-1853

ISSN 2195-1861 (electronic)

China Academic Library

ISBN 978-981-13-2320-1

ISBN 978-981-13-2322-5 (eBook)

<https://doi.org/10.1007/978-981-13-2322-5>

Jointly published with Foreign Language Teaching and Research Publishing Co., Ltd, Beijing, China

The print edition is not for sale in Chinese mainland. Customers from Chinese mainland please order the print book from: Foreign Language Teaching and Research Publishing Co., Ltd.

Library of Congress Control Number: 2018952897

© Foreign Language Teaching and Research Publishing Co., Ltd and Springer Nature Singapore Pte Ltd. 2019

This work is subject to copyright. All rights are reserved by the Publishers, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publishers, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publishers nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publishers remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Singapore Pte Ltd. The registered company address is: 152 Beach Road, #21-01/04 Gateway East, Singapore 189721, Singapore

Preface

Several years ago, Mr. Wu Hao of Beijing's Foreign Language Teaching and Research Press (FLTRP) suggested an English version of my 《中央与特别行政区关系——一种法治结构的解析》(*Relationship Between the Chinese Central Authorities and Regional Governments of Hong Kong and Macao: A Legal Perspective* (Tsinghua University Press, 2002)), to be jointly published by FLTRP and Springer Group among the English series of "FLTRP-Springer China Academic Library." After years' effort, the translation finally came to an end. Before its publication, Mr. Wu asked me to write the preface anew, expounding the academic pursuit of this research and general design of its results, along with the content, structure, and inner logic of the book. As the author, it is my compelling duty to do that without doubt.

This book originates in my doctoral dissertation. From 1992 to 1995, I studied for a doctor's degree in the Law School of Renmin University of China under the tutorship of the famed constitutionalist Xu Chongde, specializing in the relationship between the Central Authorities and Special Administrative Regions under the Basic Law of Hong Kong Special Administrative Region. A member of the draft committee both of the 1982 Chinese Constitution and the Basic Laws of Hong Kong and Macao Special Administrative Regions, Prof. Xu, is undoubtedly an authority in this respect. For the purpose of this dissertation, I spent about two years studying and researching in the Law School of Hong Kong University, which greatly enlarged the content of my dissertation. Upon graduation in 1995, I taught Constitution in Tsinghua University. As the most active field of the Chinese Constitution, the Basic Law of Hong Kong Special Administrative Region becomes naturally a key point in Constitution teaching and research. Taking into consideration the real practice since Hong Kong's return to China, I revised and amended the dissertation, which turned out to be the 2002 publication by Tsinghua University. Quite unexpectedly, the book soon became a key reference book for the research of issues related to Hong Kong and "one country, two systems," as well as a must for the teaching and research of the Basic Law. For years, it has been the only monograph on the relationship between Chinese Central Authorities and Regional Governments of Hong Kong and Macao. As the book has already been

sold out for long, Tsinghua University Press and I often received calls inquiring where to get it. To satisfy this demand, Joint Publishing HK published the book in 2014 in the original complex form of Chinese. At the end of the following year, I was transferred to the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region. The two years were spent on handling major issues on the relationship between the Central Authorities and HKSAR, which broadly updated my knowledge.

It is indeed much beyond my expectation that so many years after its publication, the book is still often been referred to and widely quoted. Given the changes and development over the decades, I should have revised and amended the book before having it translated into English. But the Press decided to have an English edition of the original text without revision. As I see it, they hope to present to their English readers a genuine picture of "one country, two systems" as well as its original design.

People nowadays often say "do not forget your original intention." So what is my original intention of writing this book? I think it is to discuss China's unique way of administrating Hong Kong and Macao under "one country, two systems." Obviously, Hong Kong and Macao is by no means a common issue. Innovative mind is needed so as to realize a win-win or even multi-win situation. I believe that in dealing with the relationship between the Central Authorities and the SARs, China has mainly drawn references in two aspects. One is its administration of the frontier area, especially the special system for the minority nationalities. As a matter of fact, throughout the dynasties there have always been special places requiring special treatment and enjoying policies and systems similar to *jimi fuzhou* that are at once hard and soft. Although it is not the direct source of "one country, two systems," there runs the same vein within the two in spirit. The other is the treatment of similar issues in modern and contemporary Western countries. As the saying goes, every family has a skeleton in the cupboard. Every country, be it under a unitary or federal system, has more or less special issues like China's special administrative regions. To name just a few, Scotland and Northern Ireland in Great Britain, Québec in Canada, Louisiana and Indigenous Indianans in America, Catalonia in Spain, and Crimea between Russia and Ukraine. Although there are lots of differences in details, the basic logic and thinking behind them are similar. In the vast cosmos, humankind is quite alone. Despite their hostile stances, it is all too natural that countries learn from each other. After all, in the foreseeable future, we cannot whatsoever learn from other planets. Therefore, it is no wonder if China takes inspiration from other nations so far as its "one country, two systems" is concerned.

This being said though, we should acknowledge that China's "peaceful unification and one country, two systems" is neither a simple replica of *jimi fuzhou* in history nor a direct transplant of a Western country's mode. It is a special program developed by China in its creative administration of Hong Kong and Macao Special Administrative Regions based on their respective situations. An intellectual property completely owned by China, it embodies typical Chinese wisdom and sets up a good example for other nations to learn. From that, we can also have a glimpse

of the supernormal strategic thinking, solid strategic confidence, and excellent politic art of Chinese people when dealing with difficulties. An American historian once told me that the US always attempts to teach China how to do things, little thinking that it has lived for 200 years only, whereas China has five thousand years' civilization to boast already! So how did China manage to survive and come all this way when there had been no America, not to mention American's guidance? A lot of problems mankind face today have already been met with and solved by China. Therefore, Chinese people have a better say as far as administration is concerned. Neither advice nor guidance is needed from the Americans. Chinese people will always have the wisdom to tide over hardships both for itself and the world at large.

The purpose of this book is to discuss the unique logic and mode of China's administration of its special administrative regions under the "one country, two systems" policy from a legal perspective. Chapter 1 discusses a theoretic issue. According to the traditional science of constitutional law, the criterion for state structure is chiefly the power division between national government (central government or federal government) and local government (local government or state government). Specifically, if the power of the local government surpasses that of the national government, it is a federal state. If the other way around is the case, then it is a unitary one. But the case in China is that under a unitary system, special administration regions enjoy much more power than states under a federal system. Therefore, to judge a country is under a unitary system or a federal one, and the criterion is not the allocation of power alone. We should see who the power giver is, and who the power receiver. Although China's special administrative regions have much more power than a federal state in America, the power is given by the central government instead of inborn. Therefore, China under "one country, two systems" is still a unitary country.

Chapter 2 discusses the historical development of state structure in China, focusing on special local establishments in the past so as to locate special administration system in history and seek linkage.

Chapters 3 and 4 discuss the formation, connotation, and legalization of "one country, two systems," the legal status of special administrative regions, and the influence of such establishments on China's state structure.

The following six chapters are the core of this book, which discuss the basic principles governing the relationship between the Central Government and Special Administrative Regions, factors affecting the relationship between the two, and analyze in detail the rights and responsibilities of the Central Government and Special Administrative Regions, respectively. In addition, there are discussions on the management of several relative relationships, including departments, provinces, autonomous regions, and municipalities under the Central Government with Special Administrative Regions, and the relationship among Special Administrative Regions. After these follows a combing of organizational setting concerning the relationship between the Central Government and Special Administrative Regions, their working principles and systems. Finally, there is a study on typical cases happened during the first five years since Hong Kong's return in 1997.

After a systematic study on the relationship between the Central Government and Special Administrative Regions, I find that the key to its management is the rule of law, and the key to the rule of law is the constitutional review. Accordingly, the last chapter discusses the constitutional review system in China, the constitutional review (judicial review) in Special Administrative Regions under the “one country, two systems” policy, the role of the rule of law in maintaining national unification, and two methods of maintaining national unification. The process of the rule of law in China is directly related to the process of its national unification. The further a country goes in the rule of law, the firmer it is in unity, and the less likelihood its division. Therefore, my suggestion is to speed up the process of the rule of law on the one hand, and make better use of the rule of law so far as the relationship between the Central Government and Special Administrative Regions is concerned.

Over the past 20 years, there have been unending arguments as follows: How much power do Special Administrative Regions enjoy under the “one country, two systems” policy? Where is the limit of the high-degree autonomy? Under what circumstances will there be a “central intervention”? With these in mind, I once made an “experiment.” Several years ago, an American legist asked me about the division of power between the Central Authorities and Special Administrative Regions under “one country, two systems,” and the relationship between “one country” and “two systems.” Deliberately, I spoke only of “two systems” without mentioning “one country”; I listed all kinds of autonomy Hong Kong SAR enjoys in accordance with the Basic Law, including executive, legislative and independent judicial power, independent power of execution, prosecution, jurisdiction, and adjudication, independent tax system, independent membership in such international organizations as WTO and International Olympic Committee, independent Customs and Exit–Entry, and the right to issue money which is allowed to a sovereign country only. I listed all the high degree of autonomy as stated in Chaps. 5 and 6 of the Basic Law, while omitting the right of the Central Authorities on purpose. I wondered how this American scholar would react. Out of my expectation, however, he burst out: If that is the case, what is the relationship between Hong Kong and China? Hong Kong is obviously an independent politic entity!”

Then, I told him the rights of the Central Authorities as stipulated in the Basic Law. In addition to the right to foreign affairs and defence which are familiar to all, the Central Authorities have the right to establish special administrative regions and stipulate major systems for them (including the right to determine the development of politic system in Hong Kong), and the right to appoint the Chief Executive and the principal officials of the executive authorities of the Hong Kong Special Administrative Region. The Chief Executive is accountable and shall report duty to the Central People’s Government who has the right to issue directives to it. If the Standing Committee of the National People’s Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in

question. Any law thus returned shall immediately be invalidated. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. The power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress, and so shall be the power of its amendment. Most important of all, all the autonomy enjoyed by HK SAR are vested by the Central Government in accordance with the Basic Law, in other words, the Central Government has the "right to give right." All these rights as a whole are called "general control power." This power, as stipulated in the Basic Law, is a natural result now that China resumes its sovereignty over Hong Kong. It was until then that my American listener understood the real meaning of "one country, two systems," and that the relationship between the Central Government and Hong Kong SAR is by no means what some Hong Kong people described, that is, the complete picture, origin, and truth of the "one country, two systems" policy.

Therefore, if we continue to stress only "two systems" and the high degree of autonomy, to the neglect of "one country" and the rights of the Central Government in accordance with the Basic Law, there will arise a wrong impression that "Hong Kong is an independent political entity" and even that "Hong Kong can be independent." I always wonder how on earth that a 20-year-old person in Hong Kong gets the idea that Hong Kong can be independent? Where does an idea as absurd as that come from? Now I have the answer. It is because for long we only speak of "two systems" without the least mentioning of "one country," and that irresponsibly, we tell them about "two systems" and "a high degree of autonomy," dishonestly omitting "one country" and the rights of the Central Government. In consequence, they can not have a whole picture of the "one country, two systems" policy and the Basic Law, nor do they know that the original intention of the "one country, two systems" policy is for the unification of China. That is why whenever the Central Government exercises its right in accordance with the Law, chances are it is distorted as "an intervention" or "western district ruling Hong Kong." We should honestly tell the truth of "one country, two systems" to the young generation in Hong Kong, letting them know not only "two systems" and the high degree of autonomy vested to Hong Kong, but also "one country" and the rights and responsibilities of the Central Government. We should let them know not only their rights in accordance with the Law, but also their responsibilities and obligations to the country and society in accordance with the Law. "One country, two systems" is neither what one imagines nor what a senior authority describes. Its true and complete picture is elaborated in the Chinese Constitution and the Basic Law, and it is that edition which all should comply with.

The past two decades have proved the success of the "one country, two systems" policy both in theory and practice. But we have to confess that throughout history and across the world, "one country, one system" is the norm. Even the European Union today adopts a unified system in many cases. For instance, more than 20 countries adopt the same exit-entry system. The reason is that humankind tends to pursue convenience both in work and life, the more convenient, the better, not the

other way around. In point of fact, “one country, two systems” has incurred a lot of inconveniences. I often hear people in the Chinese mainland complaining: After Hong Kong’s return to China in 1997, it becomes even more inconvenient going to Hong Kong than to Britain or the US! There goes a true funny story. A girl in the Chinese mainland married an English man. They planned a tour of Hong Kong via Beijing. The Englishman needed no visa procedures but a plane ticket. But a Hong Kong visa was required of the Chinese girl which she failed to get. And their plan miscarried! In utter astonishment the husband asked: “Has Hong Kong returned to China or not? Does Hong Kong belong to Britain or China? Why as an Englishman I can come and go to Hong Kong freely, while a Chinese should have so much trouble?” He tried in vain to get an answer.

I also had a similar experience. About ten years ago, a Canadian professor attended a conference in Hong Kong. After that, I invited him to another conference in Beijing. But he was detained in Hong Kong airport when checking, because he had no Chinese visa! Greatly annoyed, he called me in the airport: “Has Hong Kong returned to China or not? If I have arrived in Hong Kong, am I not in China already?” I said yes to his answer, but as for why a person going to the Chinese mainland from Hong Kong has to apply for a Chinese visa, whereas the same person going to America from Hawaii need no American visa, my explanation was the policy of “one country, two systems.” My Canadian friend retorted: “What ‘one country, two systems’ has to do with me?” It was until then that I realized the majority of people in the world do not know “one country, two systems.” What they know is that Hong Kong has returned to China, taking it for granted that going to Hong Kong is like going to Beijing or Shanghai. No other visa is needed. Quite obviously, “one country, two systems” is inconvenient both to our foreign friends and us, and the world at large do not know nor understand it.

Since Hong Kong’s return to China, the Central Government has proposed quite a few well-intended measures favorable to Hong Kong, which, unfortunately, were either demonized or defiled by some people in Hong Kong. For instance, the Central Government has been long working hard for the earliest realization of general election in Hong Kong. The general election plan in 2014 was not a “perfect” general election in western style, but it signaled a good beginning. Quite unexpectedly, however, the opposition party in Hong Kong vetoed it, which was extremely irrational and unwise. In consequence, democracy in Hong Kong suffered a lot, and Hong Kong missed the opportunity of general election. Another example is that about ten years ago, the Central Government, at the invitation of Hong Kong SAR, agreed to extend the high-speed rail to Hong Kong. When it was almost completed, the opposition party opposed to the idea of “co-location of immigration and customs” at the terminal of West Kowloon, which would otherwise benefit all people. Especially after the failure of national security legislation in Hong Kong in 2003, Hong Kong has been weak in maintaining national security. As a result, local radicals sprang up, and some went so far as to raise the banner of “Hong Kong’s independence.” In various names, Hong Kong Independence organizations continuously challenged the bottom line of the country, and the red line of “one country.” These are the things I could not have foreseen when I was

writing this book. People will think that as time goes by, the relationship between the Chinese mainland and Hong Kong SAR will be closer and closer, instead of the opposite.

Now that the good-will “one country, two systems” has incurred so many troubles, and the cost for its operation is so high, why then in his speech at the 20th anniversary of Hong Kong’s return on July 1, 2017, President Xi Jinping still reiterated the unswerving implementation of “one country, two systems,” and promised to continue doing things in strict accordance with “one country, two systems” and the Basic Law? As I see it, it is not only because of the “50-years” commitment, but more because of its original intention. The practice of “one country, two systems” in Hong Kong SAR is in conformity with China’s strategic benefit.

Some friends ask me whether I am worried about today’s disorder in Hong Kong SAR, especially the Occupy Turmoil in 2014, civil unrest in Mong Kok, public insult of China at parliament member’s inauguration, independence spreading on campus, and other inconceivable affairs that are irrational and quite abnormal. Should these things happen in other countries, there will be serious punishment. But in Hong Kong they were just let pass. My friend was very anxious and worried. I comforted him that China has enough wisdom, confidence, patience, composure, and capacity to solve these problems. However, they riot, Hong Kong can not run away. In recent years, there has been a similar case like the 79-day illegal occupation in Hong Kong in 2014. The result irrevocably was a hard fight and great loss of life. But it was peacefully settled in Hong Kong by a piece of prohibition from the court. Therein lay the strategic composure and wisdom of the Chinese people. Time and trend will always stand by the side of righteousness. We will not sway with the flag of the opposition party. Despite the continuous wind and tide over the twenty years, the increasingly close cooperation and exchange between Hong Kong SAR and the Chinese mainland cannot be stopped. The peaceful development of China and the complete rejuvenation of Chinese nation cannot be stopped. In the vast chessboard of history, it is all too natural that Hong Kong makes some troubles. But that will not change the general trend of development both in China and the world. Therefore, we will as ever forge ahead, clinging to our original intention.

I would like to give my sincere gratitude to Wang Huimin, chief translator of this book. We got to know each other through Wu Hao, and exchanged views on many details in the process of translation. His understanding of Chinese and Western culture and proficiency in both Chinese and English languages deeply impressed me. How woeful that he departed last year! Here, I express my deepest respect and grievance to him. My heartfelt thanks also go to the late Professors Huang Yulin and Xu Chongde. Both have generously helped me throughout my research.

I am also indebted to Prof. Raymond Wacks in the Law School of Hong Kong University who invited me to his University and provided all kinds of conveniences. Professor Chen Hongyi, then Dean of the Law School of Hong Kong University, Prof. Yash Ghai, and many other friends in the field of law in Hong Kong and Macao who have offered to help, my gratitude also owes to them.

Leaders and colleagues at Tsinghua University assisted me a lot during my 20-year stay from 1995 to 2015. I am thankful to them all.

Lastly, I am especially obliged to Wu Hao for his enormous effort in the translation and final publication of this book. Without his encouragement and promotion, the English edition of this book would be impossible.

Beijing, China
March 2018

Zhenmin Wang

Contents

1	The State Structure (Nation–Region Relationship)	
	in Constitutional Law	1
1.1	The Status of the State Structure Theory in Constitutional Law	1
1.2	Basic Theories of the State Structure	4
1.2.1	State Governance by Means of Regions	4
1.2.2	General Factors that Affect State Structures	6
1.3	Three Major Models of State Structure	7
1.3.1	The Concepts of the Three Major State Structures	8
1.3.2	The Differences Between the Three Kinds of State Structure	12
1.3.3	Differentiating Between the Standards of Different State Structures	17
1.4	New Developments of State Structures in the World Today	20
2	The Historical Evolution of State Structures in China	23
2.1	State Structures in Ancient Times	23
2.1.1	Prior to the Qin Dynasty	24
2.1.2	Qin Unifies Six States to Initiate China’s “Great National Unity”	25
2.1.3	The State Structures of the Qin, Han, Wei, Jin, and Northern and Southern Dynasties	28
2.1.4	The State Structures of the Sui, Tang, the Five Dynasties, and Ten Kingdoms Period, and the Song	30
2.1.5	State Structures of the Liao, Xia, Jin, Yuan, Ming, and Qing Dynasties	33
2.1.6	Changes After 1840	37
2.1.7	Historical Summation	38

2.2	The State Structure from the 1911 Revolution to 1949	40
2.2.1	The Beiyang [Northern Warlords] Government from 1912 to 1928	40
2.2.2	The Period of Kuomintang Rule from 1928 to 1949	42
2.3	Evolution of the State Structure in New China	44
2.3.1	The State Structure in the First Years of the New China	44
2.3.2	The State Structure as Stipulated by the Current Constitution	49
2.3.3	Stipulations in the Legislation Law on the Extent of Central/Local Division of Power	53
3	The Genesis and Operations of “One Country, Two Systems” Policy	55
3.1	The Origins of the Hong Kong, Macao, and Taiwan Issues	55
3.1.1	Hong Kong	56
3.1.2	Macao	59
3.1.3	Taiwan	61
3.2	Various Formulas for China’s Reunification	62
3.2.1	The Differences and Similarities of the Hong Kong and Macao Issues	62
3.2.2	Diverse Formulas for China’s Reunification	65
3.3	The Formation and Contents of the National “One Country, Two Systems” Policy	74
3.3.1	The Evolution of the New China’s Policies on Hong Kong, Macao, and Taiwan	74
3.3.2	The Forming of the “Peaceful Reunification, One Country, Two Systems” Concept	77
3.3.3	The Scientific Connotations of “One Country, Two Systems”	81
4	Legalization of “One Country, Two Systems” and Establishment of the SAR Organizational System	89
4.1	Constitutional Issues Related to “One Country, Two Systems”	89
4.1.1	Constitutional Issues Related to the “One China Two Systems” Concept	90
4.2	Whether the Force of China’s Constitution Extends to the Special Administrative Regions	94
4.3	Constitutional and Legal Grounds for Establishing the Special Administrative Regions	98

- 4.3.1 “One Country, Two Systems” Takes Its Place in the Constitution 98
- 4.3.2 Legal Grounds for Setting up Special Administrative Regions 99
- 4.4 The Legal Status of the Special Administrative Regions 101
 - 4.4.1 The Institution of China’s Provincial-Level Governments 101
 - 4.4.2 Basic Connotations of “Special Administrative Region” 102
 - 4.4.3 The Legal Status of Special Administrative Regions . . . 104
- 4.5 The Effects of the Establishment of SARs on China’s State Structure 106
- 5 The Basic Principles for Handling Relations Between the Central Authorities and the Special Administrative Regions 109**
 - 5.1 The Nature and Characteristics of the Relation Between the Central Authorities and the Special Administrative Region 110
 - 5.2 Basic Principles for Handling Central/SAR Relations 113
 - 5.2.1 The “One Country, Two Systems” Principle 113
 - 5.2.2 The Principles of “Hong Kongers Govern Hong Kong,” “Macaoans Govern Macao,” and a “High Degree of Autonomy” 116
 - 5.2.3 The Main Factors that Affect Central/SAR Relationships 123
 - 5.2.4 The Course of China’s Own Reform and Opening up 123
 - 5.2.5 The Sustained Stability and Prosperity of the SARs *Per Se* 125
 - 5.2.6 International Factors 127
 - 5.3 The Division of Functions and Powers Between the Central Government and the Special Administrative Regions 133
 - 5.3.1 General Theories on the Division of Functions and Powers Between the National and Local Governments (Central and Local Authorities). 133
 - 5.3.2 Regarding the Discussions on the Division of Central/SAR Powers. 136
 - 5.3.3 The Divisions of Central/SAR Powers by the Basic Law. 138
- 6 The Powers of the Central Authorities 143**
 - 6.1 The SAR’s Right to Establish/Organize 144
 - 6.1.1 The Power of Institution in the SARs 145
 - 6.1.2 Legislative Authority over the SARs 148
 - 6.1.3 The Power to Retain “Residual Powers” 148

- 6.2 The Power to Formulate, Amend, and Interpret the SARs’
Basic Laws and to Review Constitutional Violations. 149
 - 6.2.1 The Power to Formulate SAR Basic Laws 149
 - 6.2.2 The Power to Amend the SAR Basic Laws 151
 - 6.2.3 The Power to Interpret the Basic Laws 154
- 6.3 The Organizational Powers of SAR Governments 157
- 6.4 The Power to Declare Emergence State 162
 - 6.4.1 The Power of the Central Authorities to Implement
Emergence State in the SARs 164
 - 6.4.2 The Powers of the SAR Chief Executive
for Handling Emergencies. 165
- 6.5 Powers over Diplomatic Affairs 166
- 6.6 Powers over National Defense 169
- 6.7 The Handling of “Residual Powers” 173
- 6.8 The Origins, Nature, and Exercising of the Central
Authorities’ Powers. 175
 - 6.8.1 The Origins of the Central Authorities’ Powers 175
 - 6.8.2 State Sovereignty 176
 - 6.8.3 Standards for the Central/SAR Division
of Functions and Powers. 177
- 7 The Powers Enjoyed by the Special Administrative Regions. 181**
 - 7.1 The High Degree of Autonomy Enjoyed by the SARs 182
 - 7.1.1 Powers of Administrative Management 182
 - 7.1.2 Legislative Powers 186
 - 7.1.3 Independent Judicial Powers and the Power
of Final Adjudication 190
 - 7.1.4 The Power of the SARs to Handle Foreign Affairs
Matters on Their Own 193
 - 7.2 The SARs’ Right to Participate in National Affairs 197
 - 7.2.1 The SARs’ Delegates and Delegations Who
Attend the National People’s Congresses 197
 - 7.2.2 The Relations Between the SARs’ NPC Deputies
and the SAR Governments 201
 - 7.2.3 The Matter of SAR Chinese Citizens Holding
Office in the Central Government 204
 - 7.3 The Power to Accept “Other Powers” Granted
by the Central Government 205
 - 7.4 The SARs’ Responsibility for Upholding State Unity
and Sovereignty 206

8 The Handling of the Relevant Relationships 211

8.1 The Relations of the Central People’s Government
 Departments with the SARs 211

8.1.1 State Council Organization 211

8.1.2 The Relations of the Central People’s Government
 Departments with the Governments of the Provinces,
 Autonomous Regions and Directly Administered
 Municipalities 215

8.1.3 Relations of the Central People’s Government
 Departments with the Special Administrative
 Regions 216

8.1.4 Institutions Stationed in the SARs by the Central
 Authorities 217

8.2 Relations Between Ordinary Local Governments
 and the SAR Governments 219

8.3 Relations Between and Among the Special Administrative
 Regions 224

8.4 Taiwan’s Relations with Other Regions 227

**9 The Institutions for Handling Central/SAR Relations and Their
 Operations 231**

9.1 The Highest Organs of State Power 231

9.1.1 The Nature of the Highest Organs of State Power 231

9.1.2 The SAR Basic Law Committees of the NPC
 Standing Committee 235

9.2 The Highest Organ of State Administration 237

9.2.1 The State Council 237

9.2.2 The Hong Kong and Macao Affairs Office
 of the State Council 239

9.2.3 The Liaison Office of the Central People’s
 Government in the SARs 241

9.3 Work Principles that Must Be Followed 243

9.3.1 Abiding by the “One Country, Two Systems”
 and “A High Degree of Autonomy” Guidelines 244

9.3.2 Dealing with Matters Strictly According to Law 244

9.3.3 The Principle of Incorporating SAR Participation 245

9.3.4 Mutual Respect, Mutual Support and Common
 Development 245

9.4 How Central/SAR Relations Have Been Handled
 After 1997 246

9.4.1 The Central Authorities’ Exercise of Their Statutory
 Powers After the Two Regions’ Return to China 246

9.4.2 The SARs’ Practice of Exercising a High Degree
 of Autonomy 255

10 Case Study: The Central/SAR Relations Since 1997 261

10.1 The Hong Kong Special Administrative Region v. Ma Wei. 262

10.1.1 Facts of the Case 262

10.1.2 Was the “Maintaining” and “Adoption” of Hong Kong’s “Former” Laws an Actus Legitimus? 262

10.1.3 The Issue of the Legality of the Provisional Legislative Committee 265

10.1.4 The Verdict of the Court and Commentary 266

10.2 Litigation on the Right of Abode of Children Born to Hong Kongers in Chinese Mainland and the Relevant Constitutional Laws 269

10.2.1 Background to the Litigation. 269

10.2.2 Relevant Lawsuits and Their Effects 272

10.2.3 The “NPC Interpretation” 275

10.2.4 Follow-up Controversies and Problems of the “NPC Interpretation” 277

10.3 Desecrating the National and Regional Flags 291

10.3.1 Basic Facts of the Case 291

10.3.2 The Court’s Verdict 292

10.3.3 The Central/SAR Relations Involved 297

10.4 The Zhang Ziqiang Case (Cheung Tze-Keung) and the Li Yuhui Case and Issues of Criminal Jurisdiction 299

10.4.1 The Facts of the Cases 299

10.4.2 The Conflict Between the Two Regions’ Criminal Jurisdictions 301

10.5 Judicial Assistance in Civil and Commercial Matters Between the SARs and Chinese Mainland 307

10.5.1 Entrustment and Service of Civil and Commercial Judicial Documents 308

10.5.2 Reciprocal Implementation of Arbitral Decisions 311

10.5.3 Mutual Recognition and Enforcement of Court Rulings 313

10.5.4 Cooperation in Conducting Investigations and Obtaining Evidence 317

11 Reviews of Constitutionality, Rule of Law, and National Unity 319

11.1 China’s System for Reviewing Constitutionality 322

11.1.1 “Limited Government” and Judicial Reviews 322

11.1.2 China’s Institutions Responsible for Examining Constitutionality and Their Competence. 326

11.2 The Constitutionality Review System of Special Administrative Regions Under “One Country, Two Systems” 355

- 11.2.1 Constitutionality Reviews of SAR Legislation by the NPC Standing Committee Under “One Country, Two Systems” 356
- 11.2.2 Constitutionality Examination Powers of SAR Courts Under “One Country, Two Systems” 368
- 11.2.3 Interaction Between the NPS Standing Committee and the SAR Courts on the Matter of Constitutionality Examinations 374
- 11.3 Rule of Law and the Country’s Unity 383
 - 11.3.1 The “Chinese World Order Principles” 385
 - 11.3.2 State Unity Perspective Based on Constitutions and Rule of Law in the Modern West 388
- Postscript: New Problems and a Few Reflections 393**
- Bibliography 405**
- Index 413**

Chapter 1

The State Structure (Nation–Region Relationship) in Constitutional Law



1.1 The Status of the State Structure Theory in Constitutional Law

It is often said that a constitution is a nation's basic law, that it stipulates the nation's basic political, economic, and legal systems, that it embodies the institutionalization and legalization of the democratic system, and that it manifests the balance of power amongst the nation's social classes.¹ Put in clear and simple terms, constitutions may be explained as the law that defines peoples' political relationships and political acts, that they are a country's "fundamental law," and that they are the law that regulates democratic governance. Constitutions resolve the question of how human beings' democratic governance is to be conducted, i.e., how democratic governance in which the multitudes participate is to be legalized and institutionalized so that it proceeds in a well-ordered manner. The constitutions of capitalist countries are designed to resolve the question of legalizing and institutionalizing capitalist democracy, whereas socialist constitutions are designed to resolve the question of how to use laws to ensure socialist democracy. Constitutions are evidently the most important among a nation's diverse laws due to their intense political and fundamental nature. In modern societies, the form of democratic governance chosen and the sort of constitution enacted often determine the destiny of a state and nation.

A constitution generally stipulates a nation's democratic governance in three respects. The first, and also the most important respect, is that it must first of all stipulate the relationship between the people and the state in a country, or in other words, to whom does the state belong, by which people is it owned, what powers and rights do the people enjoy, and what powers does the state wield (via the government). This is the "state system" issue often referred to in political science and constitutional law. Up to the present, state systems have consisted in the main of

¹Wu Jialin. *Constitutional Law*. Beijing: Qunzhong Press, 1983, p. 46.

two varieties. One of these is the monarchy, where all powers of the state belong to the ruler, the ruling household and the state are integrated as a single entity, the state is the private property of the ruler and his expanded household, the powers of the ruler are unlimited, and the people are merely the ruler's subjects and have no powers or rights of any kind. The other state system is the democratic system. Under this system, all powers and rights of the state belong to the people, the state pertains to the multitudes, only the people's power is unlimited, the power enjoyed by the state is conferred to it by the people, and for which reason the government is limited government. Since the constitution is a product of the institutionalization and legalization of democracy, there is, strictly speaking, no constitution to speak of under a monarchy.²

Article 1 of China's Constitution stipulates that China is "a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants." Article 2 stipulates that "all power in the People's Republic of China belongs to the people." Chapter Two specifically stipulates the fundamental rights the people should enjoy and the duties they should fulfill with regard to the state, that is, China's state system, or in other words, the relationship between the state and the people as defined in China's Constitution.

Two, having obtained certain powers from the people, the state must set up various state institutions and distribute those powers for implementation by different state structures. The second task or mission of a constitution is to stipulate the various state powers exercised by the different state institutions in a lateral sense, mainly by conducting a division of duties and work among such state institutions as the legislative, executive, and judicial organs, that is, the so-called "state system" issue. The way a country sets up its own state institutions, the way it allocates state powers among its various state institutions, and how these powers are deployed to best effect—all of these must be consistent with its own political, economic, historical, geographical and social circumstances and may not be done in a willful or arbitrary manner. The question of science exists here as well. Those who design and draft constitutions must also be scientists, and must handle political system issues with a conscientious and scientific attitude. For example, such matters as preventing graft and corruption among government officials by means of government institutions and how to set up government institutions in order to improve the efficiency and effects of government work are first and foremost scientific issues, not simply political issues.

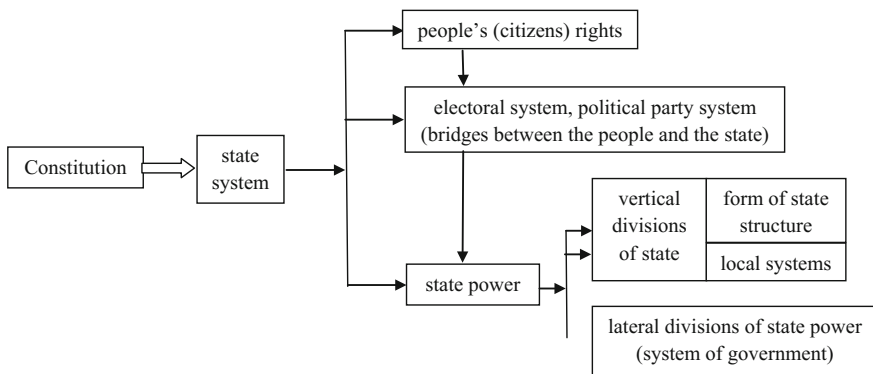
There have always been a great many ways of differentiating the types of political systems. Some Western capitalist states divide state powers, set up state institutions, and adopt a presidential system in line with the principle of "separation of exec-

²Scholars hold different views as to whether constitutions may or may not exist under a monarchical system. For example, Britain, as the place of origin of the modern constitution, has consistently retained its monarchical form, yet we cannot claim that Britain lacks a constitution or doubt that a substantive democracy (a capitalist democracy, of course) exists in Britain. True, Britain's is an unwritten constitution, but an unwritten constitution is nonetheless a constitution. Hence, even from the perspective of Britain's case, the statement that constitutions are the institutionalization and legalization of democracy is not wrong. Britain would certainly not have developed a constitution had it clung to its traditional, "classical" monarchy.

utive, legislative and judicial powers.” Others implement a parliamentary political system in line with the principle of “parliamentary sovereignty.” China’s Constitution, on its part, stipulates that China’s fundamental political system is the national people’s congress system, similar to the parliamentary system practiced by states that implement “parliamentary sovereignty.”

Three, having obtained certain powers from the people, it is not enough for the state to conduct a lateral division of these powers for implementation by various state institutions; the state must also conduct a vertical division and set up various levels of government from the top downward or vice versa, and have government structures at different levels exercise the diverse state powers, that is, the constitution’s third important mission. In other words, it should vertically stipulate the relations between the state as a whole and its component parts as well as define how the divisions between the national and regional governments should be fashioned and what kind of local government systems to adopt. Or, in the common parlance: How the limits of authority are to be defined between the central and local authorities. Such is the issue of the state structure and local government systems in terms of constitutional law. There are broadly two main systems in this respect—the federal system and the unitary system. China implements the unitary system, and that is the subject discussed in the present book.

The three aspects listed above constitute the basic framework and basic substance of a constitution. A constitution effectuates its regulation of socio-political relations by stipulating the relations of the people and the state and by defining the state’s lateral and vertical powers and functions. Those are the foci of constitutional law, which researches such matters as how to regulate the relationship between the people and the state as well as the relationships among diverse departments and between the central and local authorities. See the following diagram:



We see from the above diagram that state structure occupies a most important position in the constitution as a whole and in constitutional law since it directly concerns the unity or splitting [division] of the state and it concerns the very survival of the state, that is, a matter of real significance for today’s China as well. It should be

noted that China's constitutional law quarters had never differentiated between the concepts "state structure" and "local government." China's scholars had conducted a great deal of research on local government, but these were mainly studies on local state power systems below the provincial level, such as issues of municipal and county establishments and village and county governments. Very little research was done on state power at the provincial level, or in other words on the regulation of relationships of the central authorities with the provinces, autonomous regions and directly administered municipalities, or on major changes in the state structure subsequent to the implementation of Reform and Opening Up to the Outside.³ Traditionally, the relationship between the central authorities and provincial-level governance was only mentioned in passing when discussing local systems and was rarely accorded in-depth research as an independent issue.⁴

In view of this circumstance, I call on China's scholars of constitutional law in particular to pay attention to China's state structure, or in other words, to the relationship of the central authorities with provincial-level governance (including that of provinces, ethnic minority autonomous regions, and special administrative regions), conduct in-depth and detailed studies in this respect, and thereby serve the great cause of national unity and the needs of developing a socialist market economy and democratic rule by law. This book chooses one aspect of this major issue—i.e., the relationship between the central authorities and the special administrative regions—for conducting a monographic study.

1.2 Basic Theories of the State Structure

1.2.1 *State Governance by Means of Regions*

Human beings are social creatures who naturally form certain types of social organizations and who make a living and seek progress by means of collective strengths. Single and isolated individuals cannot exist in the world. The great Greek philosopher Aristotle once said: "Man is an animal whose nature it is to live in a polis (city). Man is by nature a political animal."⁵ However, the forms of man's social organizations have differed throughout the different stages of society's development. In primitive society, man's social organizations were formed in line with natural consan-

³In various Chinese writings on constitutional law, the concepts "state structures" and "local government systems" were seldom differentiated and often mutually inclusive. The two concepts ought to be differentiated and their various connotations and denotations specified so as to standardize the concepts of constitutional law and make them more scientific as well as to highlight the importance of state structures.

⁴In the textbook *The Chinese Constitution* edited by Xu Chongde for China's institutions of higher learning, Xu presented these two issues in independent chapters and expounded both in great detail. See Xu Chongde. *The Chinese Constitution*. Beijing: China Renmin University Press, 1989.

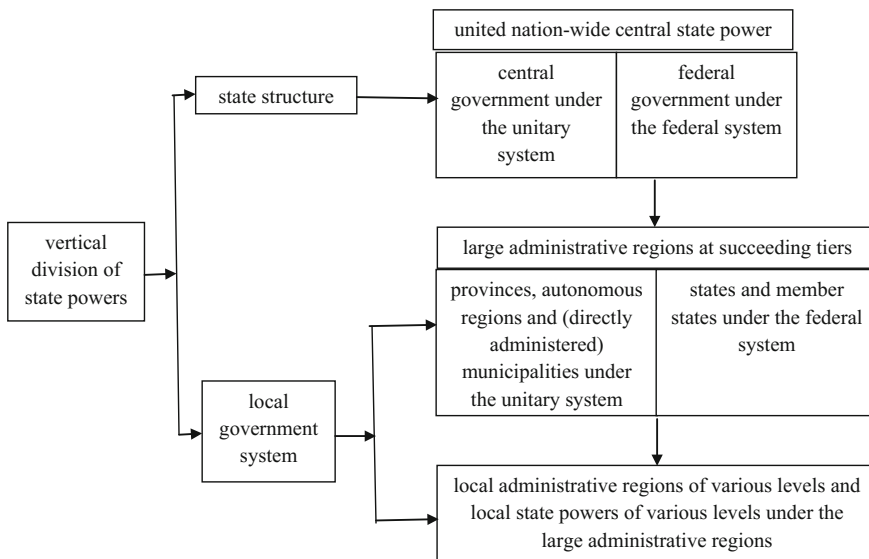
⁵Translation from H. D. F. Kitto. *The Greeks*. New York: Penguin, 1951, 1957.

guineous relationships rather than being divided by area of inhabitation. Everything was aligned in accordance with blood lines; there were no signs of anything “man-made.” But later on, exploitation and social classes arose in the wake of advances in the forces of production. An entirely new, hitherto unknown, and immense human social organization emerged—the state. Compared with the primitive clan, the state, besides serving as a tool for class domination and class oppression, also embodied a very important difference, i.e., in its internal structure. The state no longer exercised self-organization according to the ties of consanguinity as was done in the primitive clan, but structured itself in accordance with people’s different areas of inhabitation. When discussing the origins of the state, Engels noted: “As distinct from the old gentile order, the state, first, divides its subjects according to territory.”⁶ And, “This organization of citizens according to locality is a feature common to all states.”⁷

Indeed, all states, whether in ancient or modern times or in China or abroad, have separated and governed their citizens by regions, irrespective of the size of their territories or populations. No ruler, regardless of his or her eminence, greatness, or prestige, has ever been able to control every locality and every citizen in his or her domains, and has always had to “divide and rule” while retaining some important powers for his or her own personal enforcement. First of all, a state in its entirety needs an authoritative national (central) government to act as a unified representative of the state both internally and externally. Second, the state is divided into large regions, and limits of authority between the unified national (central) government and the various large regions are well defined, thereby forming the structures of diverse kinds of states and determining whether a state implements the unitary system or a federal system. After that, the large regions are divided into increasingly lower tiers of governance, right down to the lowest grassroots administrative regions. And then corresponding local governments are set up by various means and methods in the various tiers of administrative regions based on their different circumstances, thereby forming local systems with different characteristics. This produces a pyramid-like structure that may be graphically illustrated as follows:

⁶Friedrich Engels. *The Origin of Family, Private Property and State*. pp. 752–753.

⁷Translation from H. D. F. Kitto. *The Greeks*. New York: Penguin, 1951, 1957.



From this graph, we can see how a state is governed by means of dividing it into regions. We can also see the differences and relations between the state structure and local government systems and their positions in the constitution as a whole.

1.2.2 General Factors that Affect State Structures

Based on the above analyses, by “state structure” is meant the vertical structures within a state. That involves studies of which major components comprise the state as a whole, and the relationships of these components with the state as a whole. In other words, what forms does the state adopt to regulate the mutual relationships between the entire state and its components; how does the state conduct divisions of power between nationwide and local political powers, which are original powers and which are derived powers among the powers of the national government (either central government or federal government) and those of the local governments (meaning the provinces, states, and districts) in a state’s vertical division of powers, and to whom do the residual powers go?

The choice of state structure by a country’s ruling class is by no means haphazard; it is governed and limited by a series of factors—economic, cultural, historical, ethnic, religious, linguistic, geographical, military, and so forth. When the rulers give consideration to this issue, their first concern is of course that their choice must favor the consolidation of their rule and strengthen their vested political interests. In no country does one find exceptions. Also, the decision-makers must also give consideration to the most vigorous ways of promoting the state’s economic and cultural development; and they must also take into consideration their country’s

historical traditions, the people's political conventions and aspirations, and their level of acknowledgement of the unified authority. Ethnic and religious factors, too, have always been most important. If a state comprises many ethnic groups with highly disparate religious beliefs and even with very different languages, it must give full consideration to these factors when determining its state structure. National defense and security must of course be a matter of concern for the decision-makers. And one thing is quite clear: unless there are special reasons, every country in the sense of an integrated state must have a unified national defense setup and normally does not disperse its military command powers to the localities. When defining the relations between the state as a whole and its parts, consideration must be given to choices that favor the safeguarding of the country's security. Geography is also an important aspect. Experts in political geography point out that the strength of modern nations stems from the territories in which they have settled down and exist.⁸ The division into large administrative regions and the extent of the powers enjoyed by the localities is to a certain degree related to the topography and configuration of their lands. Insulated regions may form self-enclosed systems because "the mountains are high and the emperor is far away," and the powers they enjoy are greater because of their difficulty of access to the "higher-ups." Conversely, local governments that "lie at the feet of the Son of Heaven" and whose every move is in the purview of the "higher-ups" dare not make full or ample use of their power even if given substantial powers.

The state's highest decision-makers can decide the state structure their country adopts only after giving ample and comprehensive consideration to the various factors described above. From the perspective of the history of constitutions, the forming of the state structure of all countries is a "natural" historical process which rulers cannot alter by issuing arbitrary orders, although rulers may make adjustments to the structure so that it is more conducive to consolidating their rule.

1.3 Three Major Models of State Structure

The state structure issue is, in substance, a question of which level of government should best be used for implementing a country's sovereignty and powers. By "sovereignty" is meant a country's highest and ultimate political authority, both internal and external. By calling a government a "sovereign government," we mean that this government is legally and politically independent of all other governments, and that it may make decisions independently. Based on this understanding, we may in the main identify three kinds of state structures, i.e., the confederal system, the federal system, and the unitary system.

Many world states with extensive territories have adopted the federal system, as, for example the United States, Russia, Canada, Australia, India, and Germany. Some

⁸Geoffrey Parker. *Western Geopolitical Thought in the Twentieth Century*. London: Croom Helm, 1985.

small countries, such as Switzerland, also implement a federal system. Other countries, such as France, Britain, Italy, Sweden, and Japan as well as China, implement the unitary system. Generally speaking, federal systems are more suitable for countries with large areas and complex ethnic make-ups, whereas unitary systems are best for small countries and countries with single ethnic group.

1.3.1 The Concepts of the Three Major State Structures

The state structures adopted by various countries in the world may well be characterized as manifold and multifarious. Confederations, federations, and unitary systems are merely the three main forms.

1.3.1.1 The Confederal System

Confederations are loose coalitions formed for certain political and economic purposes by states that possess independent sovereignty and constitutes one form of national alliance. Although confederations are formed on the basis of certain legal documents, they do not have a unified “nationwide” constitution in the strict sense of the word, nor do they have a nationwide general government or a unified nationality (citizenship) or unified finances. Nor do they possess the main attributes of a state; they are more like a closely linked international organization, and for that reason are not comparable with, and are qualitatively different from, the unitary and federal systems. It may be said that confederations are quasi-states that bear some of the characteristics of states, and are in general a form or process of transition toward “complete states.” However, whether they are able to become truly unified “complete states” depends on a variety of complex factors.

One example of the confederal system often cited by academics is the “North American Confederation” prior to the formal establishment of today’s United States of America, i.e., the “United States of America” from 1781 to 1789 established on the basis of the Articles of Confederation that entered into force in 1781.⁹ At the very outset, the Articles clearly stipulated: “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction and right...,” and the states “enter into a league of friendship” only for the sake of “their common defense, the security of their liberties, and their mutual and general welfare....” It is evident that each of the states retained its form as a country and possessed independent sovereignty. The confederal government was not vested with the highest and final powers of decision-making; it was merely a coordinating institution, or it provided a forum for meetings attended by the various member states and had some power to exhort and advise the

⁹The United States of America (U.S.A. or U.S. for short, or colloquially “The States”). From its name, it is evident that the United States of America was new country (nation) composed of a number of states.

various states, and was therefore called a “league of friendship.” This “league” was formally replaced by what was substantially a “joint-stock company” in 1789.

1.3.1.2 The Federal System

The “federal system” refers to a new state in the complete sense, formed by a number of states or political entities for certain political and economic purposes, the member states of which each retains its own form and a number of powers, and only “delegate” powers related to sovereignty and national defense to the federation for execution thereof. The delimitation of powers between the federal government and the governments of the member states is clearly defined in writing in a constitution, while “residual powers” are retained by the member states or the people. In states with a federal system, there exists a unified, federation-wide constitution as well as a central government and legislative institutions and a judicial system. At the same time, each member state also retains its own constitution, central government, legislative institutions, and judicial system.

The U.S.A. is a typical federal system state. As well as the federal government having its own constitution and its own central government and congress and federal laws, its 50 member states too all have their own constitutions, central governments, congresses, and laws, and the federal government is not empowered to intervene in the everyday administration by governments of the member states. Hence, there are altogether 51 constitutions, 51 central governments, and 51 sets of laws in the United States as a whole. This is a typical federal system. Although there are states within the nation-state under the federal system, externally the federal government exercises the nation’s sovereignty in a unified manner and has only one voice on the international stage. The federal government in fact serves as the commonly shared ministry of foreign affairs and ministry of national defense for all of its member-state governments.

The true essence of the federal system rests in “balancing,” i.e., striking a balance between the national interests of the country as a whole and the local interests of each member state and preventing any party from “aggrandizing” its own powers. In terms of the composition of the two chambers of Congress, each state, regardless of its size, has two seats in the Senate, and their main function is to represent the local interests of the states. In the House of Representatives, the seats are apportioned according to the number of people in each state. There are a total of 435 congressional electoral districts throughout the country; congressmen are directly voted for and elected by each electoral district, respectively, and their main function is to represent the interests of the country as a whole. Hence, the U.S. Congress is a venue that regulates national interests and local interests, a place where various forces openly and legally contend and engage in “all-out competition and rivalry,” and which, in essence, constitutes a “political free market.” While ensuring the interests of each state, an important function of the federal Congress is also to safeguard the unity and interests of the country as a whole and seek to balance national interests and local interests at the constitutional level. The U.S. Supreme Court is the highest institution

in the United States for resolving disputes on the limits of federal authority and member-state authority. Among its nine Justices, there are always a few who tend more toward protecting national interests and others who lean toward protecting state and local interests, and although their views are at times sharply opposed, they must work together to reach certain compromises. The outcome of such compromises is to afford a certain degree of satisfaction to the interests of each side, but not complete satisfaction. This is a sort of dynamic balance. Regardless of how intense the disputes between the two sides may be, neither is apt to resort to force of arms, and the country will not be reduced to a situation of schisms.

Special note should be taken of the fact that under the American federal system, the federation and all of the states have their own parallel and independent government systems to carry out the duties devolved on them by the Constitution. It is true that the governments of all states and localities have their own complete sets of institutions to enforce state laws and local laws and to safeguard state interests and local interests. However, the federal government's administrative, judicial, and legislative duties are not fulfilled through the states' or local government institutions; the federal government has its own independent institutions that are strewn throughout the country and take charge of federal matters. The U.S. national government, or in other words the federal government, of course has its own set of institutions in the U.S. capital Washington D.C. In addition to these, all of the legislative, judicial, and administrative departments of the central federal government have their own branch offices in each state to directly carry out their constitutional duties and answer directly to the people. Members of the federal Congress set up offices in their own electoral districts which in fact exercise the function of soliciting local public opinion. These offices may be regarded as the federal Congress's "information and intelligence centers" and as "centers for disseminating general knowledge of law among the populace." As regards the federal court system, the federal government, in addition to establishing a federal Supreme Court, has also set up 13 federal appellate courts throughout the country, also known as federal intermediate courts. Each of these courts has jurisdiction over three or more states. Further down are established 94 federal district courts. These federal courts are responsible for handling appeals related to federal affairs. Meanwhile, each state has also set up its own court system, each with different appellations. The court systems in the states are responsible for legal actions within the states. The various departments of the federal administrative system also have their own independent working bodies which come in direct contact with the populace and exercise the administrative duties conferred on the federal government by the Constitution; they do not perform their duties through the various state governments or local governments. This is one aspect of the federal system of which we previously had insufficient understanding.

As to why things are done in this way, I believe the main reason is that all state governments and local governments in the United States are produced through direct elections by the local people instead of being appointed by the federal government. This results in the state governments and local governments being critically dependent on the likes or dislikes of the voters, being responsible to "those below" rather than to "those above," and evincing no need to report on their work to Washington