
A Primer on Governance Issues for China and Hong Kong

Michael DeGolyer

October 2010 marks the 40th anniversary of the establishment of Canadian diplomatic relations with China. In recent years we usually think of China in terms of trade or currency issues or the potential impact of the booming Chinese economy. The political system is ignored as it is thought to be outside the western democratic tradition. This article looks at how modern China is dealing with political forces arising from its increasingly capitalist economic system. It explains the very strong resistance to federalist theory although in some ways China seems headed toward a kind of de facto federalism. It suggests, particularly in the context of China-Hong Kong relations, we may be witnessing a new approach to governance which deserves to be better known among western states as they grapple with their own governance issues and as they try to come to terms with the emergence of China as a world power.

Central authorities of the Peoples Republic of China are sensitive to even discussing federalism. Those within China advocating federalism as a solution to China's complex ethnic and regional relations have more than once run afoul of official suspicion that federalism is another name for weakening and dividing the country. Officials have created an extraordinary arsenal of laws to combat what they see as intentions to undermine Central Government and Communist Party dominance. Laws against treason, secession, sedition, subversion, theft of state secrets and consorting with and especially control by foreign political bodies are broadly interpreted and readily applied to quash any sign of what Communist Party cadres consider moves to divide the unitary and unified state of China. Subversion of the unitary state and secession from the unified state are serious charges in the PRC. They are offenses which are broadly defined, readily applied and often, involve long incarcerations or capital punishment. Scholars and anyone else exploring, much less advocating federalism are well advised to tread carefully, especially if they tread on Chinese soil.

Despite official denials that China practices any form of federalism, non-China based scholars such as Zheng Yongnian¹ of the National University of Singapore may and do make the case for federalism in China. He argues that in truth China governs itself behaviorally as a *de facto* federalist state. Deng Xiaoping's reforms following his rewriting of China's constitution in 1982 devolved many responsibilities, though crucially, little formal or constitutionally stipulated power, to the provinces. Provincial officials have devised means to gain a considerable degree of local dominance over central preferences and even its dictates. The extent of provincial leeway has prompted some scholars such as Gregory Fuller to use the concept of federalism dressed up more colorfully as "economic warlordism" to describe Central Government's seeming inability to compel provincial compliance with WTO trade rules. These and other non-mainland based academics and activists readily adopt federalist related concepts to describe both actual and theoretical practices in China's governance.

Much more convincingly though, the US-based China scholar Yang Dali rejects notions of any form of nominal federalism.² He views present practice as one best described as elites seeking legal checks on the power of both provincial and central officials. These elites, as Jerome Cohen³ has documented, are joined by a considerable and growing attempt by common

Michael DeGolyer is a Professor of Government and International Studies at Hong Kong Baptist University. Author of several books and articles on China, he is also Director of the Hong Kong Transition Project.

folks to bring local cadres to heel by invoking Central Government laws against local bending and breaking of such rules. Local residents are not the only ones using the law courts to try to compel local cadres to follow the law. That central government courts are asserting supremacy over provincial ones (first attempted in 2003) is less a form of *de facto* federal practice (albeit certainly *de jure* in nature) than a means of central government Communist Party cadres regularizing, institutionalizing and legalizing their supremacy over the actions of provincial Communist Party cadres. This is essentially an assertion of control over cadre corruption via government institutions rather than, as in the past, exclusively via Communist Party procurators. It is more in line with China's policy of developing rule by law, though not yet, certainly, the rule of law. The formal power of central government courts over provincial government officials has yet to be established and often runs afoul of intra-party politics and factional jostling.

This form of intermittent rule by law may be regarded more as a form of institutional capacity building than a form of federalism, but nevertheless, there are ample grounds in Chinese practice and history to raise questions about federalism either as a solution to China's governance ills and restive provinces like Tibet or Xinjiang or as an interpretive device to better understand in particular its complex relations with the Special Administrative Regions of Hong Kong, Macao and the proposed even more Special (and even more highly autonomous) Administrative Region of Taiwan.

While federalism might be proposed as a solution to some of China's internal provincial difficulties, it certainly has not helped discussion of such matters that scholars associated with the Tibetan government in exile have advocated a federal model trending closer to a looser confederation than a US style of strong federalism. Chinese officials have deemed this idea, and with it, any other form of federalism, a mere veil over Tibetan independence. They appear very determined to prevent any such concept or practice taking root in what they insist is a unitary state governed by civil law promulgated by central government authorities and institutions such as the National Peoples Congress. But as federalism scholars know, the United Kingdom is also technically a unitary state which has only recently devolved limited powers to local assemblies. Is it possible that the two Special Administrative Regions of Macao and Hong Kong practice something like the UK version of quasi-federal relations with the central authorities? That is, while Parliament continues to declare supremacy over all and any subsidiary bodies and thus retains the right

at any time to end or reform these bodies, in practice and by written agreement certain rights and privileges are exercised by regional elected bodies with a high degree of autonomy.

In the specific and seemingly strongest case for *de facto* federalism as currently operant in China, that of Hong Kong, Peter T. Y. Cheung⁴ concludes it can "best be interpreted as an incipient stage in the development of asymmetrical federalism." Cheung implies but does not state that Hong Kong's "incipient asymmetrical federalism" (a phrase that also describes the British case) may be wholly transient: the Sino-British declaration of 1984 that laid the basis for the return of China effectively runs out in 2047 with the ending of the "50 years without change" the treaty guarantees. There is no guarantee that Hong Kong's limited or incipient, and very certainly asymmetrical form of relationship with Central Government will continue past 2047. So Hong Kong's "federalism" if that is what it is, is limited not just in scope but also in time.

While some controversy over describing present practices as a form of federalism continues to rumble on, calls for reform including real and constitutional federalism periodically occur. However, many of the Chinese scholars and intellectuals who signed the "Charter 08" manifesto which called, among many other things, for a federal system are now in jail or have otherwise suffered punishment. As a consequence, mainland based scholars are far more circumspect in their discussions of the concept. They explicitly deny it applies to either Hong Kong or Macao. And as long as Taiwan practices independence and Tibet prays for it, the prospects for central government officials objecting less strenuously over even the discussion of federalism will show little sign of improving.

Why Federalism Founders: The Context of History

Such sensitivity toward a concept of regional autonomy and local limits on central power is understandable. China has a long history of recurrent civil war and foreign invasion that imposed irksome limits on the central authorities. Certainly Britain's claim to hold the lease on Hong Kong's New Territories posed a considerable check on imperial, then later, nationalist and communist Chinese authorities over what they always considered a part of China. This is precisely why the Sino-British Declaration of 1984 used the phrase "China has decided to resume sovereignty" over Hong Kong as of midnight 30 June 1997. There was, in their view, no British "handover" or an expiry of a legal land lease, but a sovereign decision by Chinese authorities to resume the exercise of sovereignty at a time they specified under circumstances they agreed

over territory that had always been theirs. Foreign intervention and checks on Chinese authority were not only over relatively tiny Hong Kong. They extended into control of the entire nation's customs service and even to the degree that foreign nationals were protected from Chinese law by their own national laws in every province of China, not only from action by local authorities but also from the central authority. This is why, in 1949, Mao Zedong proclaimed the founding of the New China with the evocative phrase: "The Chinese people have stood up." Chinese central officials insist that they are quite familiar with the effect of checks on their power and they will have none of it again. As a matter of principle, they suspect foreigners advocating federalism and they prosecute Chinese or other ethnics advocating federalism as witting or unwitting collaborators with those who intend to weaken and once again divide China.

These sensitivities are not just a matter of historical memory. China is still a state technically divided by civil war and only very recently reunited from foreign conquest. Taiwan is considered a renegade province by central authorities and officially by most members of the United Nations as part of one China, albeit for the time under separate government. Taiwan officials responded similarly to Beijing officials. Until nearly the end of the 20th century Taiwan retained "representatives" in its parliament of what it called the lost provinces of China. This separation into one state with two governments claiming central authority traces back to 1949 when, having lost the civil war on the mainland, nationalist officials (Kuomintang or KMT) under Chiang Kai Shek fled to Taiwan. Most western states, led by the United States, continued to recognize Taiwan authorities as the official government of China until 1971 when China's UN recognition was transferred from Taiwan to Beijing.

But PRC authorities still strongly protest every action by the United States seen as protecting and perpetuating Taiwan's separation from mainland China, particularly its sales of arms. European states have, more than once, withdrawn arms sales to Taiwan under vigorous PRC protest. Chinese officials even protest the use of the term "President" in regard to the leader of Taiwan. They also protest every time the Tibetan Dalai Lama meets government officials, and most governments now treat these encounters as matters of personal meetings with a religious leader, not as a conference with the head of state of a government in exile. Sensitivities to "threats" to China's unity are high and such threats are taken very seriously.

There is evidence to the contrary. KMT soldiers

and officials fled to Hong Kong where even today Taiwanese flags will pop up on 10 October to mark the day KMT supporters consider China's National Day. Of course, the sea of flags going up in Hong Kong on 1 October, the day Communist China celebrates as National Day, vastly outweighs the dwindling number of Taiwan flags. But the very fact the Taiwan flags are raised in Hong Kong without further consequence to the flag wavers marks Hong Kong as definitely under special treatment. But whether the extent of this special treatment to Hong Kong amounts to incipient or any other form of federalism is certainly arguable. And again what mainland officials deem "the unresolved issue of Taiwan" arises and frequently entangles Hong Kong, which returned to China under a form of the proposed "one country, two systems" policy Deng Xiaoping first designed for Taiwan.

While relations between Chinese Taipei, as Central Government officials designate it, and the Peoples Republic of China have much improved, they are often strained, most recently by efforts of the immediate past administration of Taiwan under former President Chen Shui Bian of the Democratic Progressive Party (DPP) to hold a referendum on formal independence. Though the effort was defeated in the 2004 election and Chen was barely and with great controversy re-elected, the Taiwan referendum effort prompted China's government to formalize its decision making process and legal stance in 2005 with an official Taiwan anti-secessionist law. The Central Government does not recognize the right of the people to decide any matters of state by referenda. A vote by a province to accede or secede from a federal union, routinely decided by referendums in federal systems, is almost literally inconceivable in the present constitutional framework and mental outlook of Chinese officials.

In sum, many people retain acute memories of a divided, invaded China torn with civil strife. The Cultural Revolution which continued into the mid-1970s often focused on rooting out foreign political, intellectual, religious and even cultural influence, which were seen as sources of China's division and weakness, and in establishing a nationalist mentality to the extent of becoming a cult focused on making the entire population think only along the lines of one man's thought. This striking unity of direction and focus was posed as the sole means to prevent China slipping into division and chaos again. While the Cultural Revolution has been largely discredited, the extraordinary nationalism that underlay much of it still thrives and recurrently rears its head when events provoke it. And those provoking events happen regularly. Separatist movements continue

to the present to perpetrate violent acts across large geographic regions of the state while the state responds in kind against them. As of this writing, internet access remains cut off in Xinjiang province after the recent disturbances, and Tibet remains restricted to foreign access. Federalism is thus seen as a ploy to mask secessionist motives, not as a solution to China's fractious unity.

The Continuity and Weight of Chinese history

These disturbances and the reactions to them by authorities are not merely contemporary in nature or based on recent history. They reflect a strong continuity in Chinese history stemming from the way in which China was assembled, more than once, by force. China takes its very name from Qin Shi Huangdi, the man who forcibly and very bloodily assembled an empire from diverse and bitterly warring states. As recently as the 1920s and 1930s warlordism and conflict between what were in effect independent Chinese states prevailed among China's provinces. China expanded, contracted, shattered and reunified several times, but most of the fundamental dynamics of the China that First Emperor Qin initially constructed over 2,200 years ago continue to this day.

The continuity of issues faced in the forcibly unified China of Qin is more real than may be apparent at first. Emperor Qin's actions and concerns may be summarized as:

- Reform central-local relations and administration to ensure strong central authority
- Forge a new identity via unified language, currency, and other standardization
- Promote and protect inter-provincial trade, transport, and communication
- Launch massive development projects and campaigns to focus and soak up energies of the vast, diverse population
- Control the elites, thus control the masses
- Succession

Every single one of the concerns of First Emperor Qin dominated the mind of the founder of Communist China and aptly called New Emperor Mao Zedong. Mao by any account adamantly pursued these long-standing central government goals and policies, not the internationalist ideals of Karl Marx. He even reputedly spent more time reading the records of the Qin dynasty than studying the tenets of Marxism-Leninism. Mao in this sense was Chinese, not Communist, through and through.

For examples of the effects on current policy of what some may regard as ancient history, the First Emperor faced the issue of unifying a diverse and fractious

assemblage of persons, customs and administrative practices out of formerly warring states with different currencies, laws, customs and even differing languages and writing. He responded by implementing new administrative practices, creating a new "national" identity and launching, under tight control, massive development projects meant to focus and soak up the energies of a vast, diverse population while compelling administrators to work together to achieve the goals set from the center. The "New China" of Mao Zedong was also assembled from warlord states that had fought bitterly. Mao also launched massive development projects and imposed new administrative practices and structures. Mao created a new script (pin yin) and "simplified" character set for Chinese, imposed putonghua (Mandarin) as the national dialect, and sought to create a new national identity. He abolished money and substituted a nonconvertible script that came to carry his visage on every piece. Mao's massive development projects attempted to integrate China's provinces into an autarkic system of national production and national defense. He repeatedly purged party members and thus sought to terrify these new elites into obedience to his will.

While Mao's adoption of Qin's policies eventually failed, the failure was in making adaptations to the modern world in which China is one of many nations, not the Central Kingdom and dominating center of civilization, technology and military power as under Emperor Qin. And while Mao tried to settle the issue of secession, his choice soon succumbed to the machinations of Deng Xiaoping, a man Mao twice punished by exiling to feed pigs among rural villagers. Deng Xiaoping, the man who came up with the "one country, two systems" policy that successfully reunified Hong Kong and Macao to China without firing a shot, was much more adept at adapting Chinese customary governance to modernity.

That China joined the WTO in 2001, with all the restrictions on sovereignty entailed by that membership, is an attestation to Deng's successors' willingness to employ new methods of economics, not necessarily proof that fundamental resistance to political reforms curtailing the power of central authorities has disappeared. If there is such proof of Chinese authorities moving toward constraints on their political power, it would be found in the specifics of practice regarding Hong Kong.

Hong Kong's Special and Peculiar Relationship

Chinese officials describe state policy on the Hong Kong Special Administrative Region as "one country,

two systems.” Hong Kong appears to have a higher degree of autonomy in practice than it does in theory due to the very different nature of its representative, legal, administrative, and human rights regimes. It also holds independent membership in a number of international bodies, including and up to an independent vote in the WTO. The particulars of Hong Kong’s practice of the common law, independent judiciary, and separate membership in a myriad of international bodies are described in the Basic Law of Hong Kong, promulgated by an act of the National Peoples Congress in April 1990.⁵ The Basic Law is the national legislation which codifies the terms of the agreement negotiated between China and the United Kingdom between 1982 and December 1984 when a treaty was concluded regarding China’s resumption of sovereignty. It is often described as Hong Kong’s “mini-constitution.”

However, the understanding of constitutionalism under the common law prevalent in Hong Kong and that of constitutions under the civil law/Communist Party framework of mainland China differs considerably. In Hong Kong’s common law practice, what is not forbidden by the constitution is permitted. Under mainland China’s constitutional concepts, what is not specifically permitted is forbidden. Mainland scholars have explicitly stated this difference of perspective in the recent by-election “referendum” controversy.⁶

As of yet, these contrasting views about the nature of constitutions have been more in the form of mainland scholars and officials protesting the local Hong Kong government following its ordinances regarding vacancies triggering by-elections than by an act of the NPC to formalize and impose their view that such by-elections are unconstitutional. However, since 1999 nine separate acts of interpretation by the Standing Committee of the National Peoples Congress have demonstrated that the Central Government both claims and uses its right of interpretation of the Basic Law to revise provisions left either unresolved or unclear by the drafters. It has not acted so far to reinterpret the Basic Law to forbid actions it considers intolerable, but it has acted to forbid contemplated actions the NPC considered intolerable, such as amending the Basic Law to implement direct election of the Chief Executive and all members of the Legislative Council, a goal approved in the Basic Law and nominally permitted in 2007-08. A 2004 Standing Committee decision ruled that Hong Kong could not hold full direct elections in 2007-08, and a later ruling in 2007 specified that the earliest dates for full direct elections would be 2017 for the Chief Executive and 2020, or the next election following full direct election of the Chief Executive.⁷

The Chief Executive is currently both nominated and elected by an Election Committee of 800, three fourths of whom are returned by vote of Functional Constituencies that enfranchise barely a quarter of a million voters out of over 4 million potential persons qualified to vote. The other quarter are returned ex officio from former officials and sitting members of the legislature and the representatives from Hong Kong to the NPC. The power of ordinary voters to choose their Chief Executive is decidedly limited. The franchises of the Functional Constituencies are also decidedly skewed. Over 80 percent of the FC voters, mainly professionals and teachers, are crowded into 6 seats. The rest of the FC part of the Legislative Council, 24 seats, are returned by corporate votes, business sector votes, and Beijing dominated labor groups. In 2004, 14 of the FC seats were not even contested whereas all 30 directly elected seats were fiercely fought. Since amending the Basic Law requires a vote by two thirds of the members of the legislature to proceed beyond the Chief Executive’s proposed amendments, the presence of so many vested interests in the FCs has meant that the needed 40 votes out of 60 failed to materialize the first time amendment was proposed in 2005. While strong majorities of the public support change to the Basic Law toward direct elections, even stronger majorities want some progress to reform even if it involves postponement and compromise of democratic hopes. Prospects for reforming the next set of elections in 2012 appear somewhat better than in 2005 but are by no means certain to occur. They will certainly be limited, both by local vested interests and by the specific acts of the NPC.

The most important and first reinterpretation of the Basic Law by the NPC concerned a ruling that, contrary to a ruling by the Court of Final Appeal, defined away the right of abode for children of legal residents of Hong Kong born on the mainland. This 1999 interpretation made it very clear that China’s view would prevail over local courts, though, following the letter of the Basic Law, the decision in the particular case remained in effect. Fundamentally, the NPC claims the right to decide whether or not a Court of Final Appeal ruling will set a precedent in Hong Kong law. The relevant provisions are in Articles 158 and 159 of the Basic Law. The phrasing of the Articles makes clear there are bounds determined by central authorities not local ones, to Hong Kong’s legal and constitutional autonomy.

Article 158

The power of interpretation of this Law shall be vested in the Standing Committee of the National People’s Congress. The Standing

Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.

The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.

Article 159 indicates and the NPC has clearly demonstrated that it holds final power to amend the Basic Law. Since it also appoints the NPC delegates and the Chief Executive (after nomination and election by the Chief Executive Election Committee), and it nominates half the members of the Basic Law Committee which "studies" and gives its views on proposed amendments, the central authorities clearly retain a veto on and considerable control over the amendment process.

Article 159

The power of amendment of this Law shall be vested in the National People's Congress. The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive

of the Region.

Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.

According to treaty, Hong Kong's status as a Special Administrative Region will remain unchanged until 1 July 2047, when the Sino-British Declaration signed in 1984 expires and international influence in the terms of Hong Kong's reacquisition by China formally lapses. While there is no guarantee the SAR's special status will end in 2047, there is also no indication at this time that it will be extended. The National Peoples Congress will be free to act without restraint of treaty from 1 July 2047 and may revise the form of Hong Kong's governance in whole or in part at that time. Nominally and according to both proclamations and reading of the Basic Law, Hong Kong's autonomy is highly constricted. There is little evidence in the documents to claim Hong Kong has a federal, de facto-federal or even incipiently federal relationship with the central government.

However, if federalism is a separation of governmental powers in which the central authority is strictly limited in what it can do at provincial levels, then the relationship between China and Hong Kong appears to qualify as a form of federalism. Central Chinese authorities cannot tax Hong Kong citizens unless they work on mainland soil. Hong Kongers cannot be drafted into the mainland military. Hong Kong's currency is not the national currency. It is linked to the US dollar, not the yuan. Hong Kong issues passports in its own name and negotiates access of its citizens to other countries under its own authority. Citizens take the government to court under common law rules and regularly win. The government duly concedes if it loses in court. In China, even attempting to take the government to court can, in many circumstances, lead to arrest of not just the complainants but also the lawyer presumptuous enough to represent them. Mainland governments cannot lose in court unless higher, non-judicial officials at the highest provincial or central government levels approve. And, unlike in all other federal entities, police from the central authorities cannot arrest a Hong Kong citizen in Hong Kong and freely take him elsewhere in the nation. There have even been controversies over central police observing and interrogating persons in Hong Kong without local authorization. Hong Kong authorities can hand persons over to mainland

authorities at the border between the entities, but there is as yet, well after the 1997 handover to China, no rendition agreement between the SAR and either provincial or central officials. Neither the central government equivalent of the FBI nor the Mounties have arresting authority in Hong Kong.

Hong Kong confers to its residents rights and privileges unpracticed and barely perceived in the rest of the nation. Hong Kong also has separate representation and vote in international bodies such as the WTO, WHO and ASEAN. In many ways, Hong Kong's separate powers are greater than provinces under most federal systems elsewhere. In a specific case of a Basic Law provision (Article 23) empowering the SAR to enact "on its own" legislation implementing national security laws forbidding sedition, secession, subversion, theft of state secrets and control of local organizations by foreign political bodies, the lack of action to fulfill the requirements of Article 23 more than a decade after reversion to China's sovereignty appear to indicate Hong Kong has great ability to resist central government encroachment on its citizens' rights. In this sense, in this case, and at this time, Hong Kong is acting as though it were in a federal relationship in which local powers and laws prevail over those of the central authority. Certainly and particularly in the case of national security in federal entities such as the US and Canada, central authorities hesitate little to assert their power over local authorities. In the case of Hong Kong however, amendments to the Basic Law to implement national security provisions were proposed only once, and having failed to pass the legislature, were withdrawn and have yet to be reintroduced. A similar article with similar requirements and empowerment of local authorities to enact national security provisions in the case of Macao was passed in early 2010. Hong Kong stands alone in this regard and so we look at it most closely.

The Three Legs of Hong Kong's Singular Autonomy

So how can Hong Kong exercise such extraordinary powers and checks on mainland authority, particularly in the case of national security, yet not be part of a federal system? The primary sources of Hong Kong's ability to exercise autonomy rests in the continuing presence and interest of the international community, expressed in the Sino-British Declaration of 1984, and in the clear determination of the local populace to preserve and protect the rights and common law practices the Basic Law accords them. It also resides in a provision of the Basic Law that permits the SAR to grant residency to mainlanders, bring them under its laws, and in effect, protect them and itself from the

Central government and other agencies and provinces. This has been a hidden source of considerable influence over mainland officials' actions.

The interest of the international community is considerable and often obvious. Besides the US-Hong Kong Relations Act that specifies monitoring and reporting on Hong Kong's treatment under Chinese sovereignty, the UK publishes reports every six months on the progress of Hong Kong under the terms agreed in the Sino-British Declaration. The EU also produces regular reports on Hong Kong, particularly regarding human rights and competition policy practices. Every year the UN Human Rights Committee receives reports from the Hong Kong government as well as many independent NGOs and pro-democracy legislators on human rights. The international media is also well represented in Hong Kong. The proportion of Hong Kong citizens with close relatives overseas with right of abode in these foreign countries averages 45 percent, while those holding foreign citizenship and their dependent relatives amounts to around a million people, most of whom are professionals or highly skilled and highly educated.

Over 200,000 residents report Canadian citizenship themselves or having immediate family members with Canadian citizenship. The US citizen community in Hong Kong is the largest non-military collection of US citizens abroad. All up, the foreign community in Hong Kong is the largest in any city in Asia. This is to say nothing about the thousands of international firms with international or regional headquarters in Hong Kong. HSBC, one of the world's largest banks, moved its global headquarters and its main office staff from London to Hong Kong in 2010. Goldman-Sachs moved its main investment research staff from New York to Hong Kong in late 2009. Nearly all of the Fortune 500 firms have offices in Hong Kong.⁸

The large presence and extensive interests of foreign residents in Hong Kong puts a check on just how far the central authorities will go in suppressing Hong Kong's freedoms, and the extent of finance and investment flowing through Hong Kong impedes any action that might threaten the economy of Hong Kong, for China's economy would also suffer. Given the restiveness of the mainland population and its sensitivity to economic growth, imperiling Hong Kong's economy would also imperil Communist Party control of the mainland. Of this mainland officials appear fully aware.

The power of foreign interests to check central government action over Hong Kong is not inconsiderable. But it may pale next to that exercised by Hong Kong people themselves. The Hong Kong

government attempted to implement national security legislation as called for in Article 23 in 2003. This unleashed a firestorm of criticism and public backlash, culminating in a massive demonstration on 1 July 2003 that saw over 10 percent of the adult population marching in protest. Even local officials reluctantly conceded the number topped half a million protesters. An equivalent turnout would see 23 million US citizens marching around the White House or 105 million Chinese in Beijing, or nearly 3 million Canadians marching in Toronto. Two ministers immediately resigned, several business related legislators balked at passing the bill and withdrew their support, with one legislator resigning from the Executive Council. The government withdrew the bill shortly thereafter. But Hong Kongers protested again in massive numbers in 2004, and in early 2005 the first Chief Executive of the SAR, Tung Chee-hwa, who had pushed the legislation against both private sector advice and public opinion polling showing a majority strongly in opposition, resigned. The government has been reluctant ever since to reintroduce national security legislation in whole or in part. The administration in power until 2012 has indicated it has no intention of reintroducing legislation in its term.

The third leg upon which Hong Kong's peculiar freedom of action, and inaction vis à vis the central authorities, rests is Article 22 of the Basic Law. That article states:

No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law. If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government. All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region.

For entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region.

This provision gives power to Hong Kong authorities to veto or encourage a presence in Hong Kong.⁹ Having an office in Hong Kong can be greatly advantageous to central and provincial entities. The ability to do deals, attract finance, and engage in personally profitable business in Hong Kong while effectively protected from provincial and central government authority ("the personnel of these offices shall abide by the laws of the Region") is an attractive one indeed for ambitious cadres and their relatives. Central Authorities, who by Article 22 authority approve the number of persons who can resettle in Hong Kong from the mainland, also gain a lucrative source of influence and from reports, income, from such residency approvals. Many provincial and central government officials have great incentives to protect Hong Kong's ability to remain attractive to foreigners, to its highly skilled residents, and to themselves and their relatives who are looking to network and deal. In effect, they conspire to protect the golden goose that is Hong Kong from central government actions that might, even might, damage their interests in the SAR.

The cumulative effect of the three legs supporting autonomy and protecting Hong Kong's rule of law and human rights regime have been enough to overcome, so far, the attempts by central authorities to reign in and suppress these practices which it would suppress with alacrity on the mainland. Even so, to all appearances and many reports, the power of public opinion to check excesses by mainland cadres appears to be growing among the mainland populace. That millions of mainlanders come to Hong Kong every year as tourists and see for themselves the benefits of greater freedoms and greater participation in choosing government leaders is a slowly growing influence as well. The reluctance to inflict economic damage on a large scale and the requirements to permit greater freedoms and provide greater protections to foreign investors under WTO rules, and the desire to expand Chinese investment and exports abroad have also reigned in unruly cadres. The central government, in fact, has developed a clear interest in developing better means to supervise provincial cadres as well as central government employees. That it has to accept greater media exposure, greater public comment, and formalization of checks and balances to manage an economy growing rapidly in size and sophistication is obvious to many mainland scholars who are, off the record and definitely not in front of media very frank in their critiques and strong in their recommendations on reforms.

Whether these informal and unusual means of checking central power develop into a more formalized

system of checks and balances, and whether those formalized checks include some sort of quasi-federal local-central relationship remains to be seen. Certainly the authorities are loud in denouncing federalism as a concept. But China has shown that it can move in one direction even while firmly denying any and all movement that same direction. After all, Deng Xiaoping strenuously insisted that “one country, two systems” meant that socialism would always and forever be practiced on the mainland while capitalism would remain safely barred inside Hong Kong’s borders. Few officials would admit even today that capitalism Hong Kong style runs rampant throughout China. But Mao’s portrait on China’s increasingly large mountain of money shows that Chinese long ago mastered the ability to live comfortably with obvious contradictions. And few would have ever expected that the strongest defenders of free trade in the WTO would be the PRC and Hong Kong, China.

Notes

1. See Zheng Yongnian, *De Facto Federalism in China: Reforms and Dynamics of Central-Local Relations*. Singapore: World Scientific Publishing Co., Singapore, 2007.
2. See Dali L. Yang, “Economic Transformation And Its Political Discontents In China: Authoritarianism, Unequal Growth, and the Dilemmas of Political Development” *Annual Review of Political Science*, Vol. 9, 2006, pp. 143-164. Available at: www.daliyang.com/files/Yang_annual_review_of_political_science.pdf
3. See Jerome A. Cohen, “Law in political transitions: Lessons from East Asia and the road ahead for China,” written testimony to the Congressional-Executive Commission on China 26 July 2009 Available at: <http://www.cecc.gov/pages/hearings/072605/Cohen.php?PHPSESSID=ade517f9775e70baa21de08f755249f8>
4. See Peter T. Y. Cheung, “Toward federalism in China? The Experience of the Hong Kong Special Administrative Region,” in He, Baogang, Brian Galligan, Takashi Inoguchi, eds. *Federalism in Asia*, Cheltenham: Edward Elgar Publishing Ltd. 242 ff.
5. For the full text of the Hong Kong Basic Law see: <http://www.basiclaw.gov.hk/en/basiclawtext/index.html>
6. In Hong Kong, by-elections triggered by opposition party resignations brought strong denunciations and charges of both illegal and unconstitutional behavior by mainland scholars and officials. That proponents of the by-election ploy started off calling their action, meant to demonstrate support for more democratic constitutional reform, a “people’s uprising” led to deep alarm and rapid reaction by central authorities. The coalition of local pro-democracy Civic Party and League of Social Democrats dropped the “people’s uprising” slogan but it appeared to have struck a nerve and divided the former pan-democratic coalition. That League of Social Democrats members routinely attack one party rule in China makes them and all associated with them suspect to Chinese officials. These suspicions have had their effect.
7. For a list of the NPC interpretations of the Basic Law see: <http://www.basiclaw.gov.hk/en/materials/index.html>
8. For more information and survey results see the Hong Kong Transition Project website <http://www.hktp.org>
9. See also Christine Loh, *Underground Front: The Chinese Communist Party in Hong Kong*, Hong Kong University Press, 2010; Sonny Shiu-Hing Lo, *Competing Chinese Political Visions: Hong Kong versus Beijing on Democracy*, Santa Barbara, Praeger 2010; and Kelly Loper, “A Secession Offence in Hong Kong and the “One Country, Two Systems” Dilemma,” in Fu Hualing, Carole J. Petersen and Simon N.M. Young, *National Security and Fundamental Freedoms: Hong Kong’s Article 23 under scrutiny*, Hong Kong University Press, 2005, pp. 189-216.

Hong Kong’s oldest political party (other than the unofficially present Communist Party), the Democratic Party of Hong Kong, under its current head Albert Ho, decided to not participate formally in the by-elections. However, its founding head, Martin Lee, campaigned regularly with the Civic Party/League of Social Democrats by-election coalition. The continued insistence by proponents that while not a formal referendum the by-election comprised a de facto referendum prompted official responses both from Central Government and local government officials. Hong Kong authorities took great care to designate the by-elections as just that, and only that. Both the Chief Executive and the Secretary for Justice stated the by-elections are not a referendum and the elections have no legal effect tantamount to one. Hong Kong authorities are, however, acutely sensitive to their requirements under local ordinances and the Basic Law to hold by-elections when vacancies in the Legislative Council occur.

They did not anticipate opposition members of the Legislative Council using legal loopholes to resign and re-run as a form of public opinion protest. So they sought to allay the very real, very deep, and very sensitive feelings of Central Government officials and Communist Party cadres while technically complying with local ordinances having separate legal status due to the particulars of Hong Kong’s negotiated return from British sovereignty in 1997. It is almost certain that the by-election ploy will have repercussions in changes to local ordinances if not in constitutional reinterpretation by central authorities. However, central authorities have so far appeared reluctant to assert their claims to full power over Hong Kong, perhaps due to Hong Kong’s continued strong foreign presence and interest.