

Seminar Comparative Constitutional Law Switzerland – China – Hong Kong

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Subject 9:

**Economic freedom in Hong Kong, China and
Switzerland**

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Introduction

In these days of globalization and the constant desire for economic growth, the legal base, which controls and regulates the rights of all the involved, becomes more and more important. The focus of this paper is on the economic freedom of the individual, guaranteed in the constitutions of the three countries, the People's Republic of China, Hong Kong and the constitutional state of Switzerland. Each of them has its own cultural, national and juridical history with various drastic events.

China is deemed to be the most important country on the Asian continent. The economic importance nowadays and the incredible potential to become one of the biggest and most important economic powers are just two possible reasons for the indefensible economic progression in China. Nevertheless China is a developing and upcoming state which opened itself to the world no more than a few years ago. Does China have a legal base for the economic freedom statuated in their constitution?

Hong Kong, as a Special Administrative Region and part of the People's Republic of China, is still maintaining its independence. This independence allows Hong Kong to have their own legal system, customs policy and monetary system. Are there any differences between China and Hong Kong regarding the economic freedom regulated on the level of a constitution?

Switzerland on the other hand is an european constitutional state, well known as a country with a high living standards. Does Switzerland, as a democratic state have a legal base in the constitution, which protects the individual economic freedom? Is the government allowed to intervene in the economic activity of its citizens?

My goal is to give an overview on the economical freedom in these three different countries, comparing the three constitutions and to give an answer to these open questions. Moreover I want to show the differences between the constitutions of these states, including the right of the state to intervene and abridge the citizens' basic rights.

1 Switzerland

First of all, to understand the political and juridical structure of the state of Switzerland, it is necessary to get a short and rough introduction into the constitution of Switzerland and its goals.

1.1 The Constitution of the Swiss Confederation

The most important and elementary norms of Switzerland are found in the Constitution of the Swiss Confederation of 18 April 1999. The constitutional law incorporates the main features of the state regime¹. It is also described as a constitutional codification. This means the composition of all the constitutional norms in one order and expresses the higher importance and validity of constitutional law compared to other federal law.²

The Swiss state and constitutional order is mainly embodied by four basic elements: the constitutional, the democratic, the federal and the socialistic state element. These elements are not written down in the constitution, but are considered constitutive routing principles.³

The Constitution of the Swiss Confederation of 18 April 1999 has a clearly arranged system. It contains a preamble and six titles: 1. General Provisions; 2. Fundamental Rights and Liberties, Citizenship and Social Goals; 3. Confederation, Cantons, and Municipalities; 4. People and Cantons; 5. Federal Authorities; 6. Revision of the Constitution and Transitional Provisions.⁴

In consideration of the topic, the second title, Fundamental Rights and Liberties, Citizenship and Social Goals is central, with a focus on the first part, the Fundamental Rights and Liberties.

⇒ Fundamental Rights and Liberties

The Fundamental Rights and Liberties of the Constitution of the Swiss Federation of 18 April are essentially a type of human rights.⁵ They can be subclassified after the central content and the primary protection aim. This results in liberty rights, equality rights, procedural rights, social rights and political rights.⁶ The economic freedom is part of the liberty rights. Liberty rights have an extent of protection, which gives the owner of them certain rights: They mention if or not an action is allowed.

¹ HÄFELIN/HALLER, 3.

² HÄFELIN/HALLER, 9 ET SEQQ.

³ HÄFELIN/HALLER, 51.

⁴ HÄFELIN/HALLER, 11 IN CONJUNCTION WITH FLEINER, 249 ET SEQQ.

⁵ KIENER, 22.

⁶ KIENER, 25.

From the citizens point of view liberty rights are primarily defence rights against the state.⁷

1.2 The swiss economic market

Before addressing the economic freedom as a liberty right, it is an advantage to know the main features of the economic model and policy in Switzerland. The swiss economic model is based on the free market economy. The selfregulation of the market and the free access to the market for everyone effects the optimal working of the economy as a whole. On one hand, individual economic needs can be satisfied. On the other hand the wealth and welfare of the population can be assured as well.⁸ But this commitment to free market economy does not mean that the federation has to abandon any kind of influence on privat economical activity. The federation has to create real and legal circumstances for a working private economy and prevent abuse.⁹

1.3 Economic freedom

Article 27 of the Constitution of the Swiss Federation of 1999 regulates the economic freedom in Switzerland in the following way:

Art. 27 Economic freedom

(1) Economic freedom is guaranteed.

(2) Economic freedom includes in particular the freedom to choose an occupation as well as the freedom to pursue a private economic activity.

The economic freedom in Article 27 has different functions. Article 27 protects the dependent and independent occupation in the private economy.¹⁰ Furthermore it guarantees next to basic decisions on economic-political grounds, for a system of perfect competition and for the creation of a consistent swiss market, the freedom to choose an occupation and the unlimited exercise of it.¹¹ In a comparative

⁷ KIENER, 25.

⁸ MÜLLER, 638.

⁹ KIENER, 303.

¹⁰ IUS.FULL, 3.

¹¹ DECISION OF THE FEDERAL COURT 116 IA 240.

constitutional law perspective, the general guarantee of economic freedom in Article 27 in the Swiss constitution is unique.¹² It is self-evident that economic interests are not unprotected in foreign legal systems. But the position of a norm which guards economic interests and rights on the level of the constitution is unique and has not been adopted to present.

1.3.1 Functions

The economic freedom has three relevant functions in the doctrine: the individual legitimate, the politico-economic and the federal function. These three are discussed below.

(1) The individual legitimate function

The individual legitimate function exists therein, that the economic freedom according to Article 27 assures a title enforceable by law for the individual for economic and particular occupational development.¹³ Under protection is the economic activity as the central area of life of the individual. Furthermore, the legislator attempted to create an economic order, in which the individual can develop economically in an optimal way.¹⁴

(2) the politico-economic institutional function

The economic freedom fixed the principle of the free market economy on the constitutional level and constitutes an economic model of free competition. The economic freedom emanates from an economic system, which orientates itself on politico-economic principles, is free from state influences and is based on private autonomy.¹⁵ This politico-economic function is expressed in Article 94 of the Swiss constitution and obligates the confederation and the cantons to preserve the basic principle of economic freedom (paragraph 1) and protect the free competition (paragraph 4).¹⁶

¹² FLEINER, 175.

¹³ KIENER, 302.

¹⁴ KIENER, 302.

¹⁵ HÄFELIN/HALLER, 183.

¹⁶ KIENER, 303.

(3) The federal function

The federal function is written out in Article 95 paragraph 2 in the constitution of the Swiss federation. The federation shall seek to create a unified Swiss economic area, in which free intercantonal movement is guaranteed.¹⁷

1.3.2 The extent of protection

The economic freedom protects every free private economical activity in a widespread meaning and not only certain aspects of it.¹⁸ This means the right of every individual to perform every private economical occupation and to enjoy the free access to a preferred job, unrestricted from state arrangements.¹⁹ It does not matter if it is a principal occupation or a sideline job.²⁰ In other words: as guardian of a private economical system, the economic freedom protects the free market from distortion of competition of state arrangements.²¹

There is no doubt that the freedom of contract, even if it is a part of civil law is in an ineluctable connection to the economic freedom. The economic freedom includes the free choice of signatory and the free decision of the content of the contract. As a consequence, restrictions of the freedom of contract are only allowed if they are accordable with a restriction of the economic freedom.²² It is obvious that the freedom of property has a high importance for the economic freedom, particular for the private lifestyle.²³

To point out some elements of the economical freedom it is obvious to start with the free choice of occupation, because it is directly written down in the Article 27 Paragraph 2. This connotes that the Citizens can decide at their own if they want to practice an occupation to assure their subsistence or not.²⁴ The individual can decide when, how long and where he wants to work. This right persists on the whole ground of the Swiss Confederation.²⁵ Furthermore the earner is authorised to decide about

¹⁷ FLEINER, 267.

¹⁸ EHRENZELLER/MASTRONARDI/SCHWEIZER/VALLANDER, ART. 27 N7.

¹⁹ HÄFELIN/HALLER, 185.

²⁰ EHRENZELLER/MASTRONARDI/SCHWEIZER/VALLANDER, ART. 27 N12.

²¹ DECISION OF THE FEDERAL COURT 124 I 11, 18F.

²² HÄFELIN/HALLER, 185.

²³ RICHLI, 29.

²⁴ EHRENZELLER/MASTRONARDI/SCHWEIZER/VALLANDER, ART. 27 N12.

²⁵ HÄFELIN/HALLER, 187; IN CONJUNCTION WITH A DECISION OF THE FEDERAL COURT BGE 100 IA 169,175.

equity investments and his business relations. He has the organisational freedom in every respect and he is allowed to promote his products and services.²⁶

Another element of the economic freedom is the free choice of education, whereas the free accession to study at the university is not guaranteed.²⁷

The Swiss Federal Court said that the economic freedom just protects from interventions from the state. However the state is not required to offer services..²⁸ As a basic principle, federal protection from interventions from privates among themselves is not intended. The free market concept shall rules this alone.²⁹

1.3.3 The beneficiaries

The beneficiaries of economic freedom are physical persons. Swiss citizens as well as foreigners with a permanent residency have the same right to refer to the economic freedom. Legal persons (corporations, association) are beneficiaries as well.

1.3.4 Restrictions of the economic freedom

In principle, restrictions of economy freedom according to Article 27 must correspond to the requirements of Article 36. Aside of this, there is the basic rule of economic freedom in Article 94 Paragraph 1.³⁰ According to this article interferences which result in distortion of competition are prohibited, excepting the derogations from the principle of economic freedom in Article 94 paragraph 4.³¹ According to this, it is possible to differ between adverse and conform arrangements. The Swiss Federal Court created the following tripartition. Mostly conform are arrangements for the protection of police goods and socialpolitical arrangements. As primarily forbidden are considered politico-economic arrangements, which distort the competition.³²

²⁶ HÄFELIN/HALLER, 187.

²⁷ EHRENZELLER/MASTRONARDI/SCHWEIZER/VALLANDER, ART. 27 N18.

²⁸ DECISION OF THE FEDERAL COURT 130 I 26, 40.

²⁹ HÄFELIN/HALLER, 189

³⁰ KIENER, 313.

³¹ HÄFELIN/HALLER, 657.

³² BIAGGINI, 3 ET SEQ.

1.3.5 The conform restriction of economic freedom

According to Article 95 Paragraph 1 of the Constitution, the Confederation may legislate on the exercise of private economic activity.³³ The economic freedom does not apply absolut.³⁴ For a conform restriction, the prevailing premises of the Article 36 have to be fulfilled.³⁵ The prevailing premises according to Article 36 are the legal base, the public interest, the proportionality and the indefeasibility of the essence or the core.³⁶ Furthermore the basic principle of equal treatment of direct business rivals is to be noted and it has to be clarified if the arrangement is accorded with the Article 94.³⁷ In the following I will give the attention to the restriction which is conform with the principle of the economic freedom.

(1) Legal base

Conform restrictions in the economic freedom need a sufficient legal base (Article 36 Paragraph 1).³⁸ Heavy interferences need to have a constriction which is ruled on the level of a law. For less heavy interferences it is possible that it is ruled on the level of order, which has to be accorded with superior law.³⁹

(2) Public interest

An interference in the economic freedom has to be justified from an sufficient public interest (Article 36 Paragraph 2). System conformable public interests does not intend to diverge from the principle of the economic freedom, even if they influence the free competition.⁴⁰ Police arrangements are the most frequent cases in practice. Protection of police goods contents the public order, peace, security, health, morality and the good faith in business relations.⁴¹

(3) Proportionality

The pricniple of proportionality is of utmost importance in control of federal restriction of the economic freedom. In practice the proportionality is often the

³³ FLEINER, 177.

³⁴ EHRENZELLER/MASTRONARDI/SCHWEIZER/VALLANDER, ART. 27 N49.

³⁵ HÄFELIN/HALLER, 193 ET SEQ.

³⁶ FLEINER, 179.

³⁷ HÄFELIN/HALLER, 194; IN CONJUNCTION WITH BIAGGINI, 4.

³⁸ KIENER, 316.

³⁹ HÄFELIN/HALLER, 194.

⁴⁰ KIENER, 319; IN CONJUNCTION WITH HÄFELIN/HALLER, 194.

⁴¹ DECISION OF THE FEDERAL COURT 91 I 457, 460; IN CONJUNCTION WITH FLEINER, 180.

deciding criteria.⁴² The idea of the proportionality is, that the intervention in a liberty right should not be deeper than the public interest demands it to be.⁴³ The principle of proportionality enfolds three elements, which have to be given accumulative: the suitability (the state action needs to be appropriate to bring the result, demanded by the public interest), the necessity of requirement (the action has to be necessary for the reaching the aim) and the consideration of public and affected private interest.⁴⁴

(4) Equal treatment of direct business rivals

The Federal Court deducted a claim for the equal treatment or rather a prohibition for diverse treatment of the direct competitor from the economic freedom. The economic freedom complements the general law of equal treatment.⁴⁵ Direct business rivals are members of the same branch of business offering the same products to the same group of costumers in order to satisfy the demand of the group of costumers.⁴⁶

(5) The core of the right of economic freedom

An infringement of the core of the right of economic freedom according to the Federal Court is the prohibition to exercise a gainful employment, to learn a occupation under compulsion by the state, or if whole branches of trade became nationalised.⁴⁷

1.3.6 The evaluation scheme

The doctrine and jurisdiction have not designed a consistent evaluation scheme yet. An accepted procedure is the checking of the restriction of the economic freedom in two steps, suggested by BIAGGINI.⁴⁸ In the first step, the specific requirements have to be checked (Article 94). In the second step then, the traditional test criteria of liberty rights are of importance (Article 36).⁴⁹

⁴² KIENER, 321.

⁴³ HÄFELIN/HALLER, 99.

⁴⁴ HÄFELIN/HALLER, 100.

⁴⁵ HÄFELIN/HALLER, 200.

⁴⁶ DECISION OF THE FEDERAL COURT 125 I 431, 436.

⁴⁷ HÄFELIN/HALLER, 202.

⁴⁸ BIAGGINI, 7 ET SEQQ.

⁴⁹ BIAGGINI, 10.

2 The People's Republic of China

As written down in the preamble of the Constitution of the People's Republic of China, China is a country with one of the longest history in the world. To be able to analyze the economic freedom in the People's Republic of China it is advantageous to give a brief overview of the Constitution and its goals and basics.

2.1 *The Constitution of the People's Republic of China*

The constitution of the People's Republic of China was adopted on December 4, 1982 and amended in 1988 and 1993.⁵⁰ It includes the preamble, followed by 4 chapters containing norms of general principles, fundamental rights and duties of citizens, structure of the state and the national flag, national emblem and the capital. Although the constitution of the People's Republic of China is regarded as the paramount law in the country, it nevertheless can not be quoted in judicial verdicts and administrative decisions as a direct legal ground for solving concrete disputes and problems.⁵¹ Constitutional norms are not self-executing, but have the character of Soft-Law and are regarded as being of a general and vague nature. On the contrary, the Swiss Constitution has general norms as well as a specific "basic right catalogue", which is imperatively self-executing.

2.2 *The chinese economy market*

China has experienced a fascinating past with a significant transformation of the economic model.

After Mao Zedong came to power in 1949, China created a communist planning-economy. The planning economy model did not accept any private property nor a constitutional guaranteed economic freedom.⁵² The power of disposal over all corporative defined rights of disposal are in the hands of a single central decision maker. The economic process is coordinated over a hierarchical plandirective.⁵³ China's economic reform, which began in 1979, was the impulse for the change of the existing economic model into a socialist economy market. An interventionist

⁵⁰ CHENGUANG, 18.

⁵¹ CHENGUANG, 18.

⁵² KELLERHALS, 2.

⁵³ TAUBE, 32.

system forms the basis of the socialist economy market. On one hand systematic state interferences in the process of the economy are acceptable and essential, but then comprehensive planning and control are not aspired.⁵⁴ The vital importance of the socialistic economy market is the combination of the advantages of the socialism with the advantages of the allocation of resources by the market.⁵⁵ Article 15 of the Constitution of the People's Republic of China dictates that the state has to realise the socialistic market economy.⁵⁶

The socialistic influence in the chinese economy is the major difference compared to the swiss system. Being fundamentally different, it is hard to say whether or not the combination of the two system will lead to success. In my opinion it is evident, that socialism influence in the free market system results in a repression of the market.

2.3 *The economic freedom*

There is no specific Article in Constitution of the People's Republic of China, which delves into the economic freedom as Article 27 of the Constitution of the Swiss Confederation. In fact there is a "economy constitution". The economy constitution contains a decision as a whole about the order of economy, in particular about the relation of the state and the (private) economy.⁵⁷ This economy constitution reflects the aspired abdication of the state in favour of the privat and indirect-state economy.⁵⁸ In China's case, the relevant articles are predominantly found in the Chapters I and II of General Principles and Fundamental Rights and Duties of the citizens.

⇒ Eight fundamental decisions

In this context, there are eight fundamental decisions in the chinese constitution, which aim on the economic order:

(1) Decisions for a socialistic market economy

Decisions for a socialistic market economy means decisions for an economy order plus macro control. In Article 15 of the chinese constitution states that the economic

⁵⁴ HEUSER, 23.

⁵⁵ ZHENG, 77.

⁵⁶ ZHENG, 77.

⁵⁷ HEUSER, 21.

⁵⁸ HEUSER, 22.

legislation shall be fortified by the state by creating a specific legal frame for the market economy.⁵⁹

(2) Statements for the creation of direct investment (Article 18) and creation of special administration zones (Article 31) for the reintegration of Hongkong and Macao.

Article 18 permits foreign enterprises or other foreign economic organizations to invest direct or indirect in China's economy. They shall abide by China's law and their lawful rights and interests are protected by the law of the People's Republic of China. Article 31 obligates the state to establish special administrative regions when necessary. These special administrative regions shall be proscribed by law enacted by the National People's Congress in the light of the specific conditions.

(3) Statements about the property order

The freedom of property stands in a direct coherence with the economic freedom and the economic expansion of the individual. In this sector, the tradition of the socialistic planning economy from the past is still expressed. The Chinese constitution does not know a consistent concept of property.⁶⁰ According to Article 6 the socialist public ownership has the highest rank by means of production, namely, ownership by whole people and collective ownership by the working people. Article 13 says that the state protects the rights of citizens to own lawfully income, savings, houses and other lawful property.

(4) Statements to the private economy

The statements to the private economy correspond approximately to the ones about the property forms. The leading force in the national economy is, according to Article 7, the state economy. The listed sectors in Article 8 belong to the socialist economy under collective ownership by the working people, that has been guided and helped to grow by the state. The individual economy, however, is a complement to the socialist public economy. Article 11 is the legal base for the protection of the lawful rights and interests of the individual economy by the state. Furthermore the state has to guide, help and supervise the individual economy by exercising administration.

⁵⁹ HEUSER, 24.

⁶⁰ HEUSER, 24.

(5) Statements to the corporate law

The state assured in Article 16 to the state enterprises decision-making power in operation and management within the limits prescribed by law. According to Article 17 the collective economic organizations have decision-making power on conducting independent economic activities as well.

(6) Constitutional norms of interferences by the state

There are constitutional norms, in which the intention of the state is expressed to intervene into the economy. In particular this happens in reference to environment protection (Article 26), occupational training (Article 23, 42) and employment and social legislation (Article 43 to 45).

(7) Economic relevant basic rights

The for the free market economy fundamental freedom of trade and occupation is not guaranteed on the constitutional level.⁶¹ Article 42 says that everyone has the right as well as the duty to work. Moreover the freedom of movement, which is elementary important for the free choice of occupation and place of employment is not even mentioned.⁶² The freedom of association, as a particular form of the Article 35 is not warranted.⁶³

(8) Economic relevant constitutional principles

On one hand there is the Article 5, which aforesaid, that the state upholds the uniformity and dignity of the socialist legal system and that all state organs must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. On the other hand there is Article 41, which guarantees the axiom that every state intervention shall be checkable by courts or other authorities.

⁶¹ HEUSER, 26.

⁶² HEUSER, 28.

⁶³ HEUSER, 27.

3 Hongkong

On July 1, 1997, Hong Kong, the last vestige of British imperialism in China, was restored to Chinese sovereignty.⁶⁴ As a consequence of this reversion, the British dependent territory of Hong Kong became a Special Administrative Region of the People's Republic of China.⁶⁵

3.1 *The Constitution of Hong Kong*

Regarding to the fact, that Hong Kong is a Special Administrative Region, China has fixed in Article 31 of their constitution the duty to establish special administration zones if necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions. In addition to some relevant Articles of the Chinese constitution, Hong Kong has its own basic law. It is structured in nine chapters and three annexes. Chapter II deals particularly with the relationship between the Central Authorities and the Hong Kong Special Administrative Region. In respect to the topic discussed, Chapter V containing norms concerning the economy and Chapter II with fundamental Rights and Duties of the Residents are of most importance.

3.2 *The economic market of Hong Kong*

With the transfer of sovereignty from Great Britain to the People's Republic of China in 1997, China had been intended to guarantee the promised "high degree of autonomy" for Hong Kong.⁶⁶ China had to maintain high administrative, juridical, economical and political independence of Hong Kong for another fifty years since the change of sovereignty in 1997.⁶⁷ Because of the earlier British Empire, Hong Kong always had a free market and was never influenced by the communistic thought of the People's Republic of China. With the declaration, this independence had been secured for the next fifty years till 2047. This independence is also visible in the constitution. Chapter V, which deals with the economy, contains different articles about Hong Kong's competence to decide and rule the economic life. Hong

⁶⁴ COHEN/LI, 1.

⁶⁵ COHEN/LI, 71.

⁶⁶ COHEN/LI, 71.

⁶⁷ SCHÖTTLI, 12

Kong shall have an independent finance (Article 106), practise an independent taxation system (Article 108), be a separate customs territory (Article 116) and the Hong Kong dollar shall continue to circulate (Article 116). Furthermore the government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre (Article 109). So the independence has its base in the constitution. The concept of the “laissez faire” capitalism, on which the economic order of Hong Kong is based on, had not been changed since the seventies.⁶⁸ Consequently Hong Kong has a free market economy, in which the property is being scattered to many different economic subjects. The economic interaction arises from the interplay of many individual decisions, which is coordinated by the market itself.⁶⁹

Comparing the economy market of Hong Kong to that of Switzerland and China, it is apparent that the Swiss economic model is nearer to Hong Kong’s rather than the Chinese model. This is due to the history of the different countries. On one hand, Switzerland as a European country and Hong Kong as an earlier British colony are both affected by the European economic idea of a free market. On the other hand, China was being governed by communists and the economy was planned. Furthermore Switzerland names its economic model a free market economy with the state that is obligated to create the optimal environment. Hong Kong lets the free market balance the economy by itself, while China nowadays characterises its model as a socialist market economy. This is a further argument to affirm that Switzerland is, from an economic point of view, nearer to Hong Kong than China, even if Hong Kong politically belongs to China.

3.3 Economic freedom

As in the Constitution of the People’s Republic of China, there is no particular Article in the Constitution of the Hong Kong Special Administrative Region which addresses economic freedom. The main scope of Chapter V, which directly deals with the economy, is to retain the capitalistic economy.⁷⁰ Hong Kong’s economic

⁶⁸ TAUBE, 139.

⁶⁹ TAUBE, 32.

⁷⁰ GORNIG, 186.

policy was at all times to benefit the free enterprise and the free trade.⁷¹ This is regarded to be a assumption for a capitalistic economy order. Article 6 in conjunction with Article 105 of the Constitution protects the free acquisition, possession and decision over private property including the inheritance law. In order that the base of the capitalistic economy system is guaranteed.⁷² Freedom of contract, coalition and occupation is warranted by the Articles 27 and 33. Accordingly the freedom of competition and therefore the economic freedom of every individual is existing.

According to a created Index of economic freedom, Hong Kong accords the highest economic freedom and is leading the ranking since 1994.⁷³ The Index of economic freedom has been calculated every year by the Heritage Foundation and enveleops 10 specific freedoms. The following elements do play a role in the calculation of the index of economic freedom: the business, trade, fiscal, monetary, investment, financial and labor freedom, the size of the government, property rights and the freedom from corruption.⁷⁴ Hong Kong leads the ranking of the index of economic freedom 2008 with a overall score of 90.3 before singapore with 87.4. Switzerland takes place in the World’s Top Ten with a score of 79.7, behind chile (79.8) and before the United Kingdom (79.5). China on the contrary is on rank 126 with an overall score of 52.8 in between Yemen and Guinea (both 52.8). The achieved overall score expresses the procentual economic freedom.

Index of Economic Freedom⁷⁵

Country	Rank	Overall Score
Hong Kong	1	90.3
Switzerland	9	79.7
China	126	52.8

The overall scores are distributed in miscellaneous categories, describing the economic freedom situation in words.

⁷¹ GORNIG, 88.
⁷² HORLEMANN, 152.
⁷³ [HTTP://WWW.HERITAGE.ORG/INDEX](http://www.heritage.org/index).
⁷⁴ [HTTP://WWW.HERITAGE.ORG/RESEARCH/FEATURES/INDEX/CHAPTERS/PDF/INDEX2008_EXECSUM.PDF](http://www.heritage.org/research/features/index/chapters/pdf/index2008_execsum.pdf).
⁷⁵ [HTTP://WWW.HERITAGE.ORG/RESEARCH/FEATURES/INDEX/COUNTRIES.CFM](http://www.heritage.org/research/features/index/countries.cfm).

Distribution of Global Economic Freedom⁷⁶

Distribution	Overall Score
Free	80-100
Mostly Free	70-79.9
Moderately Free	60-69.9
Mostly Unfree	50-59.9
Repressed	0-49.9

According to this Distribution, Hong Kong has a free, Switzerland a moderately free economy, while China has a mostly unfree, almost repressed economy. This result is just the consequence of the political situation in these country. The economic freedom is influenced by the juridicial basis of each country. Law shall control and show the limits of the economic activity. It is directly associated with the policy. In my eyes this is the main explanation for the result of the Index of Economic Freedom by the Heritage Foundation.

Conclusion

As seen in the ranking list of the Index of Economic Freedom, the political system influeneces the economic freedom. The government is able to control the economy by legislation, because law directly controls the economic activity as well as the economic progression. This thesis is attested by the three analysed countries.

Switzerland's economic freedom for the individual is directly garantueed by the Swiss Constitution. Furthermore, the Confederation is obligated to create an optimal environment for the whole swiss economy and the economic security of the population. To be able to control an economy and its development, it is necessary that the control organ has the possibility to intervene. This is possible by constriction of economic freedom based on Aricle 36. Consequently the state is responsible for the development and the stability of the economy.

China on the contrary is still affected by its past. After a long lasting policy of comunism, the country decided to rebuild its politic and economical structure. The change is still in progress and with it the economic life. The aspired idea to link the advantages of the socialism with the advantages of the capitalism will fail. In my

⁷⁶ [HTTP://WWW.HERITAGE.ORG/RESEARCH/FEATURES/INDEX/COUNTRIES.CFM.](http://www.heritage.org/research/features/index/countries.cfm)

eyes it is impossible to connect the advantages of two conflicting ideas in this case. As a consequence, the economic freedom of the individual is constricted, if not even repressed.

Hong Kong is the prime example of a free market economy state. The economic activity itself regulates the market. The government allows the individual to self-actualise with a minimum of state control.

I do not feel responsible to administer justice about the best system of economic freedom from the practical point of view. In this case, there are two extremas with Hong Kong and China and a medium with Switzerland. Common knowledge suggests that it is an advantage to have influences from both extremas. Extremas are predestinated to get out of hand. As a consequence I would claim that the swiss system is a intelligent one. But in consideration of the actual global financial situation, even this swiss system is no guarantee for security and welfare.

Unterschiedene Eigenständigkeitserklärung

Hiermit erkläre ich, dass ich die vorliegende schriftliche Arbeit selbständig und nur unter Zuhilfenahme der in den Verzeichnissen oder in den Anmerkungen genannten Quellen angefertigt habe. Ich versichere zudem, diese Arbeit nicht bereits anderweitig als Leistungsnachweis verwendet zu haben. Eine Überprüfung der Arbeit auf Plagiate unter Einsatz entsprechender Software darf vorgenommen werden.

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