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## Federalism and Autonomy in Switzerland and China

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- [1] BURGESS, Michael (1993): „Federalism and Federation: A Reappraisal“, in BURGESS, Michael / GAGNON, Alain G. (Ed.): *Comparative Federalism and Federation*. Hempstead: Harvester Wheatsheaf.
- [2] CHANG, David W.-W. (1989): *China under Deng Xiaoping. Political and Economic Reform*. New York: St. Martin's Press, Inc.
- [3] CHEN, Jianfu (2008): *Chinese Law: Context and Transformation*. Leiden, Boston: Martinus Nijhoff Publishers.
- [4] CHIU, Hungdah (1983): „Prospect for the Unification of China: An Analysis of the Views of the Republic of China on Taiwan“, *Asian Survey* 23(10): 1081-94.
- [5] DAVIS, Michael C. (1999): „The Case for Chinese Federalism“, *Journal of Democracy* 10(2): 124-37.
- [6] DUCHACEK, Ivo D. (1970): *The Territorial Dimension of Politics*. New York: Holt, Rinehart and Winston.
- [7] GE, Yongping (2002): „Verfassungsrechtliche Grundlagen von Hongkong“, *Verfassung und Recht in Übersee* 35(3): 355-73.
- [8] HAEFELIN, Ulrich / HALLER, Walter (2005): *Schweizerisches Bundesstaatsrecht*. Zuerich, Basel, Genf: Schulthess Juristische Medien AG.
- [9] HALLER, Walter / KOELZ, Alfred (2004): *Allgemeines Staatsrecht*. 3rd Edition. Basel, Genf, Muenchen: Helbing & Lichtenhahn.
- [10] HEILMANN, Sebastian (2004): *Das politische System der Volksrepublik China*. 2nd Edition. Wiesbaden: VS Verlag für Sozialwissenschaften.
- [11] HORLEMANN, Ralf (1999): *Die Rueckgabe Hongkongs und seine neue Verfassung. Grenzen der Autonomie*. Hamburg: Institut für Asienkunde.
- [12] KILPER, Heiderose / LHOTTA, Roland (1996): *Foederalismus in der Bundesrepublik Deutschland*. Opladen: Leske & Budrich.
- [13] LINDER, Wolf (2005): *Schweizerische Demokratie*. 2nd Edition. Bern, Stuttgart, Wien: Haupt Verlag.
- [14] NORTH, Douglas C. (1988): *Theorie des institutionellen Wandels*. Tübingen: Mohr Siebeck.

- [15] PETERSSON, Niels P. / SCHROEDER, Wolfgang M. (2007): „Souveraenitaet und politische Legitimation“, in JOCHUM, Georg (Ed.): *Legitimationsgrundlagen einer europaeischen Verfassung*. Berlin: Duncker & Humblot: 103-46.
- [16] SCHMIDT, Dirk (1996): *Die Entwicklung der Beziehungen zwischen der Volksrepublik China und der Republik China auf T'aiwan von 1987 bis 1993*. Frankfurt am Main: Peter Lang GmbH.
- [17] SCHMIDT-GLINTZER, Helwig (2004): *Das Neue China*. 3rd Edition. München: C.H. Beck oHG.
- [18] VATTER, Adrian (2002): „Foederalismus“, in KLOETI, Ulrich / KNOEPFEL, Peter / KRIESI, Hanspeter / LINDER, Wolf / PAPADOPOULOS, Yannis (Ed.): *Handbuch der Schweizer Politik*. 3rd Edition. Zuerich: Verlag Neue Zuercher Zeitung.

## Introduction

Ever since Taiwan<sup>1</sup> separated from China<sup>2</sup>, it was one of the biggest interests of the latter to reintegrate Taiwan into its political system. To reach this target, China uses a concept called “one country, two systems“, which Taiwan strongly opposes. On the following pages, I ask for the reason of this refusal.

There is also a second purpose of this paper. Originally, it simply compared the political systems of Switzerland and China, focusing on federalism and autonomy. Thanks to bright advises, it still aims at delivering a consistent analysis of these topics, but tries to reach this target in a more relevant way. To put it briefly, I will not just examine the research question given above, but try to simultaneously elaborate federalism and autonomy in Switzerland and China.

### 1 The Proposal: One Country, Two Systems

On October 1, 1949 Mao Zedong proclaimed the People’s Republic of China. The Chinese Civil War was over, the communists had won, and the nationalists fled to the Taiwan island to preserve the Republic of China. Ever since this division, the reintegration of Taiwan into China is seen by the PRC as a historical obligation, through which it wants to regain its importance in international politics<sup>3</sup>. To reach this target, the PRC developed the principle of “one country, two systems“. This concept was first mentioned in 1982 by Deng Xiaoping, who directly referred to Ye Jianying’s “Nine-Point Unification Plan“ of 1981<sup>4</sup>. It stresses that Taiwan would be allowed, after unification with China, to have a „high degree of autonomy“ and its own socio-economic system<sup>5</sup>. Most importantly, Taiwan could practise its capitalism, while the mainland of China maintains socialism<sup>6</sup>.

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<sup>1</sup>Also the Republic of China, or ROC.

<sup>2</sup>Also the People’s Republic of China, or PRC.

<sup>3</sup>Schmidt 1996, 64 f.

<sup>4</sup>Schmidt 1996, 68.

<sup>5</sup>Chiu 1983, 1082.

<sup>6</sup>Schmidt 1996, 69.

In 1982, the PRC introduced article 31 in its newly drafted constitution to juridically underlay the principle of “one country, two systems“. Article 31 allows the establishment of so called “Special Administrative Regions“ (SARs), which are quite different from the common Chinese provinces. The two SARs so far existing, Hong Kong and Macau, provide good examples for this: They are entitled to manage a broad range of substantial competencies and to act, in certain fields of duties, independent from the central government. But how are these SARs different from the common provinces? The People’s Republic of China is a unitary state. In unitary states, a solitary authority of state governs over a unified territory and people. All powers are concentrated in the hands of a central government. Although there may be territorial sub-units, these are only of an organisational nature<sup>7</sup>. This perfectly captures the Chinese political system. The Chinese provinces only handle minor competencies of mostly administrative nature and are legally, financially and politically dependent on the central government<sup>8</sup>. This also accounts for the Autonomous Regions, which are, according to the constitution, autonomous through self-government, but are in reality, mostly because of financial matters, even more dependent from the central government than the provinces<sup>9</sup>.

At a first glance, the principle of “one country, two systems“ seems to be perfectly reasonable for Taiwan: Taiwan could, after unification, stay capitalistic, would be partially independent from the PRC and in power of a broad range of competencies. Nevertheless, 80% of the inhabitants of the ROC say that the principle of “one country, two systems“ is not attractive as a principle for unification, while only 10% say it is<sup>10</sup>. *How can we explain this refusal?* This is the research question of this paper, and I will now introduce my approach of answering it.

A hint to the answer of the research question is delivered by the survey just cited. This survey states that when Taiwanese people are asked if they „support the stance of ‘one country, two systems’ or a generalized concept similar to the Hong Kong and Macau models“, the amount of them answering with “yes“ is quite high. If the same people are presented details of what “one country, two systems“ actually means, like „Taiwan will become a local government“ or „accepting the rule of the PRC“, the amount of

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<sup>7</sup>Haller / Koelz 2004, 140.

<sup>8</sup>Chen 2008, 129; Heilmann 2004, 112.

<sup>9</sup>Heilmann 2004, 231 ff.

<sup>10</sup>See <http://www.gio.gov.tw/taiwan-website/4-0a/politics/most20010802.htm> [Visited at 03.08.2008.].

those answering with “yes“ shrinks to the 10% stated above<sup>11</sup>. It is thus my hypothesis that the reason for the refusal of the principle of “one country, two systems“ lies in the fact that the position this principle transfers to Taiwan after unification is not as favourable as it looked like on first sight. To answer the research question we thus have to make an in-depth analysis of what position the SARs are assigned to. Because China essentially claims that the principle of “one country, two systems“ allows the SARs to be autonomous regions<sup>12</sup>, a good way of doing so is to check for the autonomy of Hong Kong and Macau. Therefore, we must first define “autonomy“.

## 2 The Benchmark: Federalism

In this chapter, I am going to define autonomy. To do so, I will introduce into federalism as well, because these two concepts are closely intertwined. In essence, federalism is an organising principle of a state, and autonomy is one of its most important aspects. In a second step, I will use the established definition of autonomy to analyse the position of the two SARs so far existing in the Chinese political system. This, eventually, allows us to interpret the refusal of the principle of “one country, two systems“ by Taiwan in the next chapter.

### 2.1 Federalism and Autonomy

Let us start by looking at federalism, because this automatically leads us to a definition of autonomy. The scientific debate about federalism is extremely diverse, and there are various ways of approaching this topic<sup>13</sup>. I have chosen an approach focusing on institutions<sup>14</sup>, namely constitutional provisions:

Federalism is an organising principle of a state which allocates, through constitutional provisions, political power to a general government and re-

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<sup>11</sup>See <http://www.gio.gov.tw/taiwan-website/4-0a/politics/most20010802.htm> [Visited at 03.08.2008.].

<sup>12</sup>Horlemann 1999, 101 ff.

<sup>13</sup>See Kilper / Lhotta 1996, 23 ff.; Vatter 2002, 78 f.

<sup>14</sup>By “institution“ I mean formal institutions, „formal rules of the game“ (See North 1988).

gional governments in a way that creates substantially autonomous component units as well as a federal nation<sup>15</sup>.

According to this definition, a federally organised state consists of two levels of state: A federal level, controlled by a central government, and a regional level, controlled by regional governments. What is more, both the central and the regional governments need to be in charge of those powers enabling them to constitute a sovereign state or an autonomous component unit, respectively. *In short, a federation is a sovereign state consisting of autonomous component units*<sup>16</sup>. If one of these elements is missing, a state is not a federation: If a political system contains autonomous component units, but is not a sovereign state, it is a confederation of states. A confederation of states is an alliance of sovereign states, based on an international treaty, without a central authority<sup>17</sup>. If a political system is a sovereign state, but does not know any autonomous subnational units, it is a unitary state, like I have already described it<sup>18</sup>.

It should now be clear why exploring federalism means exploring autonomy, too, but the question remains how the powers inside a state need to be assigned to a general government and regional governments so they create both a sovereign state and autonomous component units. Only the second part of this question, the autonomy of the component units, is of central importance in this paper. Nevertheless, I also cover the question of the sovereign state. By doing so, I account for the second purpose of my paper, which is to elaborate the political systems of Switzerland and China. A reader only interested in the research question may thus skip the next section.

### 2.1.1 Sovereign State

Commonly, states are defined as existing if a sovereign central government rules over a defined territory and people<sup>19</sup>. A federal government is sovereign if it is the highest authority inside a state and in control of the monopoly on the legitimate use of physical

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<sup>15</sup>Duchacek 1970, 194; Kilper / Lhotta 1996, 23; Burgess 1993, 4 ff.; Linder 2005, 139.

<sup>16</sup>See Duchacek 1970.

<sup>17</sup>Haller / Koelz 2004, 150 f.; Duchacek 1970, 208 ff.

<sup>18</sup>Haller / Koelz 2004, 140 ff.; Duchacek 1970, 234 ff.

<sup>19</sup>Haller / Koelz 2004, 6 ff.; Petersson / Schroeder 2007, 108.

force<sup>20</sup>. To be in that position, it needs to possess juridical supremacy<sup>21</sup>. Additionally, the central government must not be reliant on the individual approval and resources of the component units. A central government dependent on the component units does not exist in a federation, but in a confederation of states<sup>22</sup>.

The indicators to check for the sovereignty of the central governments in Switzerland and China are thus the following: First, the central governments power to make final decisions, which I define as existent if the law of the component units can be dissolved by federal law<sup>23</sup>. Second, the monopoly on the legitimate use of force, which is given if the federal government has the control over the army. Third, the central governments financial and political independence from the component units, which can be found in its rights to levy its own taxes and to freely organise and conduct its responsibilities<sup>24</sup>. Fourth, the allocation of the territory and people of a country to the general government, which has to be explored by directly checking for respective constitutional provisions.

In Switzerland, the general government is sovereign and thus bears a federal nation. First, it has juridical supremacy: If federal law and cantonal law clash, cantonal law is dissolved by federal law<sup>25</sup>. Second, it also has the monopoly on the legitimate use of physical force, as it is in charge of the army<sup>26</sup>. Third, it is the federal government who levies the taxes<sup>27</sup>, and the government is free in organising and carrying out its responsibilities<sup>28</sup>. Fourth, the central government has a people and a territory: The “Schweizervolk“ is the population of all cantons, and the entirety of the cantonal territories defines the federal territory<sup>29</sup>.

The Chinese federal government also clearly brings forth a sovereign state: First, it can dissolve all laws or administrative or local rules and regulations<sup>30</sup>. Second, it has

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<sup>20</sup>Petersson / Schroeder 2007, 108.

<sup>21</sup>Petersson / Schroeder 2007, 103 ff.; Haefelin / Haller 2005, 268.

<sup>22</sup>Duchacek 1970, 222 ff.; Petersson / Schroeder 2007, 108.

<sup>23</sup>See Petersson / Schroeder 2007, 108.

<sup>24</sup>Duchacek 1970, 222 ff.

<sup>25</sup>Art. 49 (1) Swiss constitution; Haefelin / Haller 2005, 336.

<sup>26</sup>Art. 58 (3) Swiss constitution.

<sup>27</sup>Art. 128 Swiss constitution.

<sup>28</sup>Art. 177 + 178 Swiss constitution.

<sup>29</sup>Art. 1 Swiss constitution.

<sup>30</sup>Art. 5 + 67 (7 + 8) + 89 (14) Chinese constitution.

the monopoly on the legitimate use of physical force, as it directs the armed forces<sup>31</sup>. Third, the central government has the power to levy taxes, and it can act independent from the component units<sup>32</sup>. Fourth, the Chinese government rules over a united people, defined as consisting of all people holding the Chinese nationality<sup>33</sup>. The Chinese constitution does not, however, define its territory, but refers to the “sacred territory”<sup>34</sup> or “Chinese territory”<sup>35</sup>, so that we can see a such as given.

We have seen that both Switzerland and China have a central government empowered to constitute a sovereign state. Before we turn to the autonomy of the component units, we have to call our attention to an additional point: The *assured* existence of the federal nation. Imagine that the component units could simply dissolve the federation at any point. All powers allocated to the federal government, as well as its independence from the component units, would be worthless. We would have to speak of a confederation of states, not a federation.

The existence of a sovereign state is assured if its sovereignty and monopoly on the legitimate use of physical force can not be taken away from it by the component units, unless the central government has agreed on it<sup>36</sup>. This is true for both Switzerland and China. In China, there simply is no constitutional provision that would allow such a step. In Switzerland, there is one: The initiative to totally revise the Swiss constitution<sup>37</sup>. A such could be launched by the cantons, if they are supported by the parliament, and leads to new elections of the executive as well as the legislative, and to a new structuring of the state by making a new constitution<sup>38</sup>. Theoretically, the central government could be taken away any of the competencies described above. In practice, this seems very unlikely, because the central government itself works the new constitution out<sup>39</sup>. We can thus say that those powers needed to constitute a sovereign state could only be taken away from the central government if it agrees on this step.

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<sup>31</sup>Art. 89 (10) + 93 Chinese constitution.

<sup>32</sup>Heilmann 2004, 101 + 112.

<sup>33</sup>Art. 33 Chinese constitution.

<sup>34</sup>Preamble Chinese constitution.

<sup>35</sup>Art. 32 Chinese constitution.

<sup>36</sup>Petersson / Schroeder 2007, 108.

<sup>37</sup>Art. 138 Swiss constitution.

<sup>38</sup>Art. 138 + 160 (1) + 193 Swiss constitution.

<sup>39</sup>See Haefelin / Haller 2005, 517 ff. + 532 f.

This perfectly corresponds with the definition of the assured existence of a sovereign state given at the beginning of this paragraph.

In sum, both the central governments of Switzerland and China are allocated those powers they need to bring forth a sovereign state.

### 2.1.2 Autonomous Component Units

Let us now come back to the original topic of this paper by defining autonomy and looking at those powers needed to be allocated to regional governments in order they constitute autonomous component units.

Autonomy means, to start with, partial independence from the central authority. Component units totally dependent on the central government are part of a unitary state, and component units totally independent from the central government are sovereign states in a confederation of states. The question arises how independent the component units have to be for being autonomous, and how dependent to be part of a sovereign state? I define autonomy in the broadest thinkable understanding, because looking at extremes is always a good way of analysing something in a comprehensive and consistent way: The component units should be as independent as possible, restricted only by those powers allocated to the central government. This restriction guarantees that the component units remain component units, and are no states by themselves, which is also their degree of dependence from the central government. According to this definition, *autonomous component units are independently functioning states-in-states, missing sovereignty*, and the regional governments must thus be assigned all powers needed to run such “non-sovereign states“.

The question remains which powers the regional governments allow to run an independently functioning component state. The best way to answer this question is to look at a political system that shares the conception of autonomy just brought forward: The political system of Switzerland<sup>40</sup>. The autonomy of the Swiss component units, the cantons, is seen as given through four factors, which, for an easier understanding, can be split in two categories: First, the cantons are assigned all competencies they need

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<sup>40</sup>See Haefelin / Haller 2005, 272.

to run an independently functioning state, and second they have the right to make final decisions. Let us have a closer look at these points.

The first category contains three fields of duties that are assigned to the cantonal governments in order they can constitute independently functioning component units: First, the cantons are free to organise their political, economical and juridical systems thanks to their power to give themselves their own constitutions and to pass their own laws<sup>41</sup>. Second, the cantons are in charge of all competencies they need to run an independently functioning state<sup>42</sup>. This is given to them in a very broad sense: The constitution simply states that all powers not assigned to the central government are powers the regional governments are in charge of, and that those powers given to the federal nation are only those in need of a uniform solution<sup>43</sup>. In short: Those powers given to the regional governments are of substantial importance for their autonomous functioning. Third, the cantons are allowed to levy their own taxes<sup>44</sup>, so they are at least partially financially independent from the federal nation.

The second category is about the cantonal government's power to make final decisions, which stems from the existence of no other restrictions to the canton's sovereignty than federal law<sup>45</sup>. This point is worth further explanation: We have defined the border of the autonomy of the component units being the sovereignty of the central government. Sovereignty basically means juridical supremacy<sup>46</sup>. In other words: Regional governments can independently act *as long as not restricted by federal law*. This means that there is space left for them to make final decisions, because they can make all decisions *allowed* by federal law. If, on the other hand, local decisions could not just be overruled out of juridical, but also political reasons, even the legal decisions may be dismissed. There were thus no space left for the local governments to make final decisions. But if local governments can not finally manage their powers, they can not independently function. The ability to make final decisions is thus the decisive factor of autonomy<sup>47</sup>. This requirement is given in Switzerland because the cantons are only

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<sup>41</sup>Haefelin / Haller 2005, 273; Art. 51 (1) Swiss constitution.

<sup>42</sup>Vatter 2002, 83.

<sup>43</sup>Art. 3 + 42 Swiss constitution.

<sup>44</sup>Vatter 2002, 83.

<sup>45</sup>Vatter 2002, 83.

<sup>46</sup>Petersson / Schroeder 2007, 103 ff.

<sup>47</sup>See Kilper / Lhotta 1996, 23.

restricted by federal law, especially civil rights, but not any other kind of restrictions from the federal government<sup>48</sup>.

Having defined which powers need to be allocated to the regional governments so they constitute autonomous component units, we now have to look at an additional point, which is that the central government could, by changing the constitution, dismiss the component units existence or autonomy. If this is the case, we can not call the respective regional units autonomous, because their ability to make final decisions then relies on the will of the central government, what is self-contradictory. We thus have to bring forth an additional requirement for “autonomy“: The component units’ existence and autonomy has to be guaranteed by the constitution<sup>49</sup>.

The problem that the central government could simply change constitutional provisions can be solved through the power of component units to influence and eventually block this process. This can be done, most importantly, through the representation of subnational states in national politics<sup>50</sup>. The component units are usually represented in national politics through a second legislative chamber, next to that chamber representing the people. This second chamber, however, only allows the subnational states to block unwelcome decisions if it is as strong as the first chamber. If the two chambers have not the same influence on legislative matters, the second chamber can not fulfil its duty of protecting the regions<sup>51</sup>.

To make this very clear: The representation of the component units in national politics, assumed it includes their ability to block decisions to dissolve their autonomy or existence, is the single most important aspect of a federation. The component units need, to be autonomous, the power to make final decisions. Otherwise, all powers allocated to them are worthless. But this ability to make final decisions can not exist when its existence is not guaranteed, while this guarantee is given through the representation of the component units in national politics. The „accommodation of the constituent units

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<sup>48</sup>Art. 51 (2) Swiss Constitution; Vatter 2002, 83; Haefelin / Haller 2005, 291 ff.

<sup>49</sup>Duchacek 1970, 234 ff.

<sup>50</sup>Duchacek 1970, 244.

<sup>51</sup>Haefelin / Haller 2005, 424.

(...) in the decision-making procedure of the central government“ is thus „the hallmark of federation“<sup>52</sup> and the main difference between unitary states and federations<sup>53</sup>.

Again, we can take Switzerland as the role model for the just said: In Switzerland, the cantons are equally represented in the “Staenderat“, which has equal competencies than the peoples chamber<sup>54</sup>. Decisions concerning changes of the constitution need to have the votes of a majority of the cantons<sup>55</sup>. In the same way the Swiss cantons can protect their autonomy, they can protect their existence, which is also written down in the constitution: The existence of the cantons is guaranteed through two constitutional provisions: First, the cantons are itemised in the Swiss constitution as the defining parts of Switzerland. Second, the federal government is not able to dissolve a canton or even change its territory<sup>56</sup>. The initiative of a total revision of the Swiss constitution does not undermine the guaranteed existence and autonomy of the cantons, because every decision concerning the adoption of a new constitution has to be approved by a majority of the cantons<sup>57</sup>.

We have now defined “autonomy“ and are able to test for the autonomy of Hong Kong and Macau. For the sake of comprehensiveness, I would like to glimpse at the autonomy of the “normal“ Chinese provinces, first. The Chinese constitution does not allocate enough power to its provinces so we could speak of autonomy. First, local governments are not just restricted by federal law, but also by the political will of the central government<sup>58</sup>, so they do not have the power to make final decisions. The provinces neither have all powers they need to run an independently functioning component state. First, the organisation of the Chinese provinces is prescribed by law<sup>59</sup>, and the fact that the local governments have the power to pass laws in some fields of duties<sup>60</sup> is annulled because of its non-final character. Second, only such minor responsibilities are allocated to the regional governments that do not allow to run an independently functioning component state; in essence, the provinces are just admin-

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<sup>52</sup>Burgess 1993, 5.

<sup>53</sup>Duchacek 1970, 234.

<sup>54</sup>Haefelin / Haller 2005, 422 ff.

<sup>55</sup>Art. 140 Swiss constitution.

<sup>56</sup>Haefelin / Haller 2005, 282 ff.; Art. 1 + 53 Swiss constitution.

<sup>57</sup>Art. 138 Swiss constitution; Haefelin / Haller 2005, 519.

<sup>58</sup>Art. 89 (14) Chinese constitution.

<sup>59</sup>Art. 95 Chinese constitution.

<sup>60</sup>Art. 100 Chinese constitution.

istrative sub-units<sup>61</sup>. Third, the provinces are not economically independent because the power to levy and define taxes lies in the central governments hands<sup>62</sup>. This is the prove for the claim in the last chapter that the Chinese system is, without having looked at the SARs now, a unitary system, consisting of a sovereign state, but not of autonomous component units.

## 2.2 Autonomy in Hong Kong and Macau

We have seen how to define autonomy, and that China has a unitary political system without autonomous provinces. It is now time to turn to the autonomy of Hong Kong and Macau. In this section, I am going to compare their constitutional provisions to the indicators defined above by first looking at the fields of duties assigned to them, then checking for the regional government's abilities to make final decisions and finally analysing if the existence and autonomy of Hong Kong and Macau is - if present - guaranteed. During this process, I will concentrate on Hong Kong. Because the autonomy of Hong Kong goes further than the one of Macau, researching for the reason of the refusal of the principle of "one country, two systems" by Taiwan makes most sense when checking for the autonomy of Hong Kong.

Before we start the analysis, let me deliver an evaluation of the situation of Hong Kong. One has to bear in mind, however, that I can not cover all points related to Hong Kong's status in the Chinese political system, but will present those I think are the most important ones. First of all, we have to look at the relationship between the Chinese constitution and the Basic Law of Hong Kong. The Basic Law of Hong Kong is a common law in the Chinese legal system<sup>63</sup>. This means that the right to interpret and change it lies in the hands of the PRC's central government, and that all powers assigned to Hong Kong are delegated to it from the central government<sup>64</sup>. Hong Kong is thus a local administrative region of the PRC<sup>65</sup>, assigned with executive,

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<sup>61</sup>Art. 99 + 101 + 103 + 104 + 105 + 107 + 110 Chinese constitution; Chen 2008, 129.

<sup>62</sup>Heilmann 2004, 112.

<sup>63</sup>Ge 2002, 366.

<sup>64</sup>Art. 2 + 158 + 159 HK Basic Law; Ge 2002, 367 ff.; Horlemann 1999, 101 ff.

<sup>65</sup>Art. 12 HK Basic Law.

legislative and judicial powers<sup>66</sup>. China has not, however, given the responsibility for Hong Kong's foreign affairs and defence out of its hands<sup>67</sup>.

Which powers are assigned to Hong Kong? In economical and financial matters, Hong Kong is independent from China. It has its own currency, budget, tax-system, trade policy, an independent tariff-system and it is, most importantly, a capitalistic system, based on property rights<sup>68</sup>. Additionally, Hong Kong has the right to conduct foreign relations connected to these fields, for example to participate in trade-related international organisations, such as the WTO, under the name "Hong Kong, China"<sup>69</sup>. In juridical matters, Hong Kong's position is more complicated. Although Hong Kong has its own juridical system and the power to pass laws<sup>70</sup>, its supreme court (Court of Final Appeal), in general empowered to make final jurisdictions<sup>71</sup>, can not make final decisions on *all* matters<sup>72</sup> and Hong Kong does, because of the Basic Law's position as a common law in the Chinese legal system, not have full control over its own constitution<sup>73</sup>. Additionally, every law passed in Hong Kong can be rejected by the National People's Congress<sup>74</sup>, and the legislation is dominated by the executive, which is close to the PRC<sup>75</sup>. This leads us to Hong Kong's position in political matters. Hong Kong has its own political system<sup>76</sup>, but the PRC is involved in it in various ways. First of all, the Chief Executive of Hong Kong not just gets appointed by the PRC, but also is responsible to it and has to execute its directives<sup>77</sup>. Additionally, the PRC is able to proclaim the state of war over Hong Kong, and thus to fully control Hong Kong in extraordinary situations<sup>78</sup>.

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<sup>66</sup>Art. 16 + 17 + 19 HK Basic Law.

<sup>67</sup>Art. 13 + 14 HK Basic Law.

<sup>68</sup>Art. 5 + 6 + 105 - 135 HK Basic Law; Horlemann 1999, 151.

<sup>69</sup>Art. 151 HK Basic Law; Horlemann 1999, 46 + 151 ff.

<sup>70</sup>Art. 17 + 80-96 HK Basic Law.

<sup>71</sup>Art. 19 HK Basic Law.

<sup>72</sup>So called "acts of state", a vague concept and probably a gateway for the PRC to exercise influence, are not in its jurisdiction (Art. 19 HK Basic Law; Horlemann 1999, 130 f.).

<sup>73</sup>The Basic Laws can be named constitutions because they are the highest laws *inside* Hong Kong (Horlemann 1999, 105).

<sup>74</sup>Art. 17 + 160 HK Basic Law; Horlemann 1999, 110.

<sup>75</sup>Horlemann 1999, 117 ff.

<sup>76</sup>Art. 43 - 140 HK Basic Law.

<sup>77</sup>Art. 12 + 45 + 48 (8) HK Basic Law.

<sup>78</sup>Art. 18 HK Basic Law.

Let us now analyse the situation of Hong Kong inside the political system of China by comparing it to the indicators of autonomy defined in the last section. The first question is if those powers assigned to the government of Hong Kong allow it to be an independently functioning component state. First, Hong Kong is not, although it has its own constitution and the power to pass laws, able to freely organise its political, financial and juridical system. Most importantly, this is because the Basic Law is a regular law in the Chinese legal system, and as such can be changed and interpreted by China's National Peoples Congress<sup>79</sup>, and because laws passed in Hong Kong can be dismissed by the PRC. Besides of that, the fact that the Chief Executive is elected by and responsible to the PRC shows how dependent Hong Kong is from China. Additionally, Hong Kong is restricted in its independence because its Court of Final Appeal is not responsible in all topics. Nevertheless Hong Kong is, second, in charge of a broad field of competencies, except that China is handling its foreign politics and defence. Because these powers are not essential for running an independently functioning component state, we can define Hong Kong as being in charge of all competencies needed to constitute a such including, third, the power to levy taxes<sup>80</sup>.

Before we interpret these results, we must have a look at the question if the government of Hong Kong is empowered to make final decisions. It is not, because its acting is not just restricted by federal law, but by political reasoning, too. The Chinese constitution states that regional decisions can not just be dismissed out of juridical, but also political reasons, when it speaks of dismissing "inappropriate" decisions<sup>81</sup>. I have already referred to this fact when analysing the autonomy of the provinces.

Hong Kong can thus not be seen as autonomous. It does not have the power to make final decisions, what already eliminates the possibility that it is an independently functioning member state. Moreover, it is not able to freely organise itself, which further highlights its dependence from the Chinese central government. We can thus not ask for the guaranteed autonomy of Hong Kong, because it is not existent. Nevertheless it is interesting to look at how stable its position is. The fact that Hong Kong is organ-

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<sup>79</sup>This is fundamentally different from the Swiss case, where provisions of cantonal constitutions can be rejected by the central government, when they contradict federal law, but where the federal government has no ability to change or interpret the cantonal constitutions by itself (Art. 51 (2) Swiss constitution; Haefelin / Haller 2005, 294.).

<sup>80</sup>See Horlemann 1999, 115.

<sup>81</sup>Art. 89 (14) Chinese constitution.

ised in its Basic Law, which is a common law in the legal system of China, is, again, an important point in this question. This means that the Basic Law can be changed by China's National Peoples Congress at any time. This can not be blocked by Hong Kong, because it is not represented in a second legislative chamber, which is not existent in the political system of China<sup>82</sup>. But what about the existence of Hong Kong? China has agreed to guarantee the existence of Hong Kong for the next 50 years<sup>83</sup>. It is, however, unclear, how breaches of this provision would be handled.

In sum, we can see that Hong Kong is not autonomous. Hong Kong is not able to run an independently functioning component state, because it can not freely organise itself, is, especially politically and juridically, dependent on the PRC and does not have the power to make final decisions. Nevertheless, Hong Kong enjoys substantial independent powers. These powers, however, are not guaranteed to Hong Kong. China still can be categorised as a unitary system, because it does not consist of autonomous component units. It, however, delegates some competencies to the SARs, and can thus be described as an asymmetrically decentralised unitary system.

### 3 Understanding Taiwan's Refusal

At the very beginning of this paper, I asked why Taiwan opposes the principle of "one country, two systems" and hypothesised that the reason for this refusal lies in the position that this principle assigns to Taiwan in the Chinese political system. In this chapter, I show why my hypothesis can be accepted, and therewith answer the research question.

Having analysed the autonomy of Hong Kong and Macau, we easily understand why the ROC refuses the principle of "one country, two systems": By agreeing to reunite under this principle, the ROC would risk to lose everything. It may well be that Taiwan would enjoy some degree of independence from the PRC, like Hong Kong and Macau do, but this is not the decisive point. The decisive point is that not just would the ROC not be autonomous, but also those powers theoretically assigned to it would not be guaranteed. In fact, China could make a normal province out of the ROC.

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<sup>82</sup>Art. 57 - 78 Chinese constitution.

<sup>83</sup>Art. 5 HK Basic Law; Art. 3 (12) Sino-British Joint Declaration.

The main reason the SARs still enjoy their independent powers thus has to be found in an interest China has in letting those powers to them. Usually, these reasons are seen in financial interests and the role Hong Kong and Macau play in attracting Taiwan to reunite with China<sup>84</sup>. In other words, the SARs are dependent on China's good-will and voluntary self-restriction<sup>85</sup>, and the same would be true for Taiwan. An interesting thought derives from the fact that, as we have seen, China is using Hong Kong as a "show model"<sup>86</sup>, through which it wants to attract Taiwan to reunite. What if, Taiwanese people may think, Taiwan reunited, and China, having reached its target, is not in need of self-restriction anymore?

The just said can not only be deduced from theory, but is often expressed as well. As early as 1983, a Taiwanese writer has already feared that integration into China under the principle of "one country, two systems" would be a degradation of Taiwan to a provincial level<sup>87</sup>. Another scholar even speaks of reunification as signing a "death certificate"<sup>88</sup>.

This is strong evidence for my hypotheses that it is the position of Hong Kong and Macau inside the political system of China that prohibits Taiwan from reuniting, although it can not be seen as a prove of it, which is impossible to reach. Nevertheless, I accept my hypotheses at this point and see the answer to the research question thus in the phrase that *Taiwan rejects unification with China under the principle of "one country, two systems" because this principle does not transfer autonomy to Taiwan, but a position dependent on China that could lead, in the worst case, to the consumption of the ROC by the PRC and its downgrading to the rank of a common Chinese province.*

## Conclusion

I have shown in this paper that the principle of "one country, two systems" is not interesting to the ROC because it does not assign an autonomous position in the Chinese political system to it but would make it vulnerable to insignificance or even destruc-

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<sup>84</sup>Chang 1989, 206; Horlemann 1989, 151 ff.

<sup>85</sup>Horlemann 1999, 107.

<sup>86</sup>Chang 1989, 208.

<sup>87</sup>See Chiu, 1983.

<sup>88</sup>Chang 1989, 228 f.

tion. At the same time, I have introduced the political systems of Switzerland and China with a focus on federalism and autonomy in these two countries. We have seen that China is an asymmetrically decentralised unitary state, while Switzerland can be seen as a perfect federation.

The biggest value of this analysis lies in the possibilities it offers for further research. It would be very interesting to elaborate new proposals for the unification of Taiwan and China based on the insights gained in this paper. The crisis between China and Taiwan is seen by many as one of the biggest dangers of today's international politics, and thus deserves intensive attention by scholars as well as practitioners.

## 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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