

The Spread of Federalism in China and Its Impact

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Since the 1911 Revolution, there has been an ongoing debate in China over its form of state structure. This debate is a reflection of the Chinese dilemma: by bringing absolute rule to a close and establishing a republic in its place, China had intended to bring in a federal system.⁽¹⁾ Although the international situation ultimately forced the Chinese to choose the other alternative, it did not turn out to be easy for a single government to look after a country that spreads over more than ten million square kilometers in area. That is why even now, the Chinese intelligentsia are still looking at the possibilities of federalism.

Looking back over the past ninety years of Chinese constitutional history, this paper believes that while on the surface centralized government seemed to have won the day, nevertheless federalist thought remained a powerful undercurrent. One might even say that centralized government itself would not even have succeeded without federalism. From this point of view, this paper shall focus on the spread of federalism in China and its influence on Chinese form of state structure.

1. The Chinese's Understanding of Federalism

It was in 221 B.C. when Qin Shihuang unified China and imposed a centralized system of prefectures and counties. This system had the following characteristics. Firstly, the prefectures and counties had little or no autonomy. In contrast, the powers of the central government were absolute, and they reached all aspects of society. Then, authority at each level was responsible only to that of levels above, not of levels below. Fourthly, the Emperor himself occupied the peak of the pyramid of power.⁽²⁾ For the next 2000 or so years, this power structure

⁽¹⁾ Liu Di, "The Revolution of 1911 and Federalism", *Comparative Law Review* Vol. 35 No.1, Institute of Comparative Law, Waseda University, 2001, pp. 1-24.

⁽²⁾ Xin Xiangyang, *Great-nation Dukes (Daguo Zhuhou)*, Chinese Social Press, 1996, p. 44.

came to be the model for the relationship between the central government and the regions. Since the Emperor enjoyed absolute power, the question of the form of state structure was irrelevant.

In the middle of the nineteenth century, Chinese intelligentsia began to take notice of the federal systems in America and Europe. One of the earliest to introduce federalism in China was Wei Yuan, who wrote about the Swiss and American models in *Haiguo Tuzhi*.⁽³⁾ Then in 1848, Xu Jishe, former Superintendent of Fujian, compiled maps and other information obtained from foreign missionaries into *Yinghuan Zhilue*, a book introducing the histories and geographies of countries around the world. In this book, Xu also made mention of the federal systems in America and Europe.⁽⁴⁾

However, it was only towards the end of the nineteenth century that Chinese revolutionary and reformist forces began advocating federalism for China founded on the Swiss and American models. In 1895, Sun Yatsen established the Xingzhong Hui, which had as its objective the implementation of a united government. By "United government", the party was referring to a federation like that of America. When Sun visited Japan in 1897, he met Japanese members of the Xingzhong Hui, to whom he confided that for many years the Chinese people have suffered because of the ceaseless squabbling amongst the regional powers. Hence, he argued, China must become a federation in order to contain the regional powers and also to provide a central government to administer them.⁽⁵⁾

In the same year, the reformist Liang Qichao addressed a letter to Hunan advising them to adopt self-rule like the Western federal states. Liang explained that in the West, each province exercised autonomous rights as if it was a country in itself.⁽⁶⁾ From this description it is ob-

(3) Wei Yuan, "General Notes of America in the Outer Atlantic Ocean (the middle part)", *A Catobibliography of Coastal Countries (Haiguo Tuzhi)* Vol. 60, 1842.

(4) Xu Jishe, "Europe" and "The History of the United States", Vols. 4 and 9 respectively, of *Round-the-Globel Sketch Annals (Yinghuan Zhilue)*, Xinhua Sanwei Bookroom, 1898.

(5) "Conversations with Torazo Miyazaki and Shu Hirayama", *Complete Works of Sun Yatsen* Vol. 1, The Chinese Bookshop, 1981, p 173.

(6) Liang Qichao, "An Exhortation letter to Chen Baozhen", *The Chinese History Society ed., Records on Modern Chinese History, the Reform Movement of*

vious that he was referring to a federal system. In 1901, when Liang was writing *Case Study on Rousseau*, he again advocated federalism.⁽⁷⁾ Although he later abandoned this stance, Liang continued to argue that China should model its parliamentary system on the experiences of federal states. Before the 1911 Revolution, Liang wrote "Personal Views on the Parliamentary System of China", in which he suggested that China should follow the American method of having equal representation for each state. This meant that since, in America, there were forty-four states in total with two representatives each, China with only twenty-two provinces would have four representatives for each.⁽⁸⁾

Meanwhile, passing through Paris on his way back to China in late November of 1911, Sun Yatsen spoke to the *Paris Daily* and explained that China was divided into twenty-two provinces, in addition to the dependencies of Mongolia, Tibet and Xinjiang. This made the country bigger in area than even Europe. As cultures and traditions varied greatly from province to province, it was difficult for China to maintain centralized rule and therefore it should opt instead for a federal system like that of Switzerland and America. With a federal system, each province would have autonomy on its local affairs, while at the same time the central government kept rights on military, diplomatic and financial affairs.⁽⁹⁾

Federalism was a major factor for the 1911 Revolution, because one of the main catalysts of the revolution was regionalism. In mid-nineteenth century, as an attempt to curb the Taiping Uprising, Ching China gave the green light for regional superintendents to create their own armies. At the same time, a number of economic and political reform implemented towards the end of the Ching period contributed to the financial strength of the regions. Thus from late nineteenth century to early twentieth century, regionalists became powerful enough to

1898 Shenzhou Guoguang Press.

(7) Liang Qichao, "Case Studies of Rousseau (Lusuo Xuean)", *Complete Works of Liang Qichao* Vol. 1, Peking Publishing Press, 1998, p 508.

(8) Liang Qichao, "Personal Views on the Parliamentary System of China", *Complete Political Works of Liang Qichao*, Chinese Political Science and Law University Press, 2000, pp. 214–5.

(9) Sun Yatsen, "Interview with the *Paris Daily*", *Complete Works of Sun Yatsen* Vol. 1, The Chinese Bookshop, 1981, pp. 561–2.

threaten the Ching regime. In response to this the Ching government tried to regain absolute power over the country, but they met with obstinate resistance from the regions.⁽¹⁰⁾

During the 1911 Revolution, Chinese provinces announced their independence one after another, and the regional militarists began calling for a federation. Guangxi, for instance, proposed a federal system based on the American model. Zhejiang, too, expressed a similar opinion. While Shandong wanted a constitution which clearly defines China as a federation, Guizhou proposed the establishment of a "Federal Republic of China".⁽¹¹⁾

In fact, the Congress of the Representatives of the Provincial Governments formed during the revolution was an obvious imitation of the Congress of Federation of America, while the Principles of the Provisional Government of the Chinese Republic were more or less similar to the Articles of Confederation passed in America in 1777. The provisional law of the Republic had characteristics of federalism, not surprising since it took as its model the legal systems of federal states in the West.⁽¹²⁾

In February 1937, the Chinese Communist Party approached Kuomintang with five proposals and four guarantees, in return for a combination of effort against Japanese invasion. Specifically, the five proposals and four guarantees included the amendments of the name of the Communist government to that of Special District Government of the Republic of China, and the name of the Red Army to the national Revolutionary Army, which would take their instructions from the Nanking Government and the Military Affairs Committee. On February 2, 1937, the Communist Base in Shangxi-Gansu-Ningxia was re-

⁽¹⁰⁾ From the end of the nineteenth century to the early part of the twentieth century, a threat of regionalism spurred the Ching government onto drastic measures to regain political hold over the country. For information on the struggle between regionalism and the centralized regime, see Li Xiuling, "Revolution as a Substitute for 'New Politics'", Xu Jilin ed., *Modern History of China Vol. 1 (1800–1949)*, Shanghai Sanlian Bookstore, 1995, pp. 245–69.

⁽¹¹⁾ Li Jiannong *A Political History of lative A Political History in the Past Thirty Years (Zuijin Sanshinian Zhongguo Zhengzhishi)*, Shanghai Pacific Bookstore, 1931, p. 463.

⁽¹²⁾ Yang Youjiong, *Legislative History of Modern China (Jindai Zhongguo Lifashi)*, Commercial Book Press, 1936, p. 80.

named a Special District, and subsequently a Border District on May 1. In this way, the Shangxi-Gansu-Ningxia Border District Government came into being on September 6 of the same year. The Border District Government was defined as “a centralized government of the first level; that is, although it is subordinate to the Republican Government, within its own boundaries it enjoys the same rights as that of a central regime.”⁽¹³⁾

Thus, although PRC is a unitary state, its relationship with the Special District Government shows that it was in fact closer to being a federation.

2. Federalism and the Constitution

Looking back, one can see now that federalism had great impact on the Chinese constitutional movement. Even though the a federation did not materialize, many of China’s constitutions and their drafts hinted at the influence of federalist thought; some constitutions were virtually federal ones.

(a) The Constitution of Hunan

A constitution was passed in Hunan in November 1921. It was a federal constitution drafted by the Hunan province during the Constitutional Movement.⁽¹⁴⁾ Specialists point to the fact that in this constitution, the powers of the local government were clearly differentiated from that of the central government, thus ensuring the specific rights of the province.⁽¹⁵⁾

(b) Draft of the Guoshi Constitution

The draft of Guoshi Constitution, too, was in essence a federal constitution, drafted by Zhang Junmai using concepts borrowed from the various federal systems around the world. With regards to the legislative rights of the central and regional governments, this draft constitution took its hint from

⁽¹³⁾ Xin Xiangyang, op cit., p. 255.

⁽¹⁴⁾ Liu Di, “A Study of Chinese Federalism on the Making of the Constitution of Hunan Province”, *Comparative Law Review* Vol. 34 No.1, Institute of Comparative Law, Waseda University, 2000, pp. 1–24.

⁽¹⁵⁾ Yang Youjiong, op cit., p. 289.

the Canadian model. However, while with Canada the residual power went to the central government, the Chinese model allocated residual power according to its nature. That is, national rights were retained by the central government, while those local in nature were allowed to the regional government.⁽¹⁶⁾

(c) The Republican Constitution of 1923

In October of 1923 a national constitution was passed in Parliament, but it was abolished just one year later. The 1923 Constitution was a combination of Zhang Junmai's draft with other ideas from the constitutions of other federal states.⁽¹⁷⁾ In the debate over the passing of the constitution, there was heated argument from all sides about its nature. But from the structure of the constitution and from the objectives of its legislators, there can be no denying that the 1923 Constitution was federal.⁽¹⁸⁾

⁽¹⁶⁾ The National Constitution, too, was in essence a federal constitution, drafted by Zhang Junli using concepts borrowed from the various federal systems around the world. With regards to the legislative rights of the central and regional government, this draft constitution took its hint from the Canadian model. However, while with Canada the residual power went to the central government, the Chinese model allocated residual power according to its nature. That is, national rights were retained by the central government, while those local in nature were allowed to the regional government.

⁽¹⁷⁾ Liu Di, "A Study of the Federal Constitution of China", *Comparative Law Review* Vol. 34 No.2, Institute of Comparative Law, Waseda University, 2001, pp. 1-45.

⁽¹⁸⁾ The chapter on national rights states that rights over a total of thirteen areas, such as agriculture, mining, forestry, school and banking systems would be shared by the central and regional governments, while the regions enjoyed autonomy in eleven areas including education, business enterprise, transport, water-power resources and tax collection. The regional governments were not allowed to conclude treaties or agreements, keep armies nor establish military schools; and they could not interfere with the national legal system by the writing of local legislature. Should there be dispute over the legislative rights of the central and regional governments, they would be brought forward to the Supreme Courts for mediation. Meanwhile, the chapter on regional systems stated that regions would be divided into two categories: prefectures and provinces. There were clauses for the implementation of regional self-rule, descriptions of the provincial congresses and councils, and prefectural congresses and governors, as well as definitions of the relationship between a province and a prefecture.

(d) The Constitution of 1946

On 15 November 1946, the Kuomintang kicked off a session to debate the constitution. Thus on 15 December of the same year, the 1946 Constitution came into being. Again, Zhang Junli was a major force behind its implementation. For instance, Chapter 10 on the rights of the central and regional governments was based on Zhang's draft of 1922 as well as the 1923 Constitution.⁽¹⁹⁾ In that sense the 1946 Constitution essentially inherited the federal characteristics of its predecessors.⁽²⁰⁾

The 1946 Constitution then stated that, for matters not otherwise specified, they shall be administered by the central government if of a national nature, by the provincial government if of a provincial nature; and by the prefecture if applicable only to that prefecture.

In fact, in January 1946 before the constitution was made public, a committee made up of the various political parties were attempting to amend the rights of the provinces to have constitutions, but this was eventually left out of the final draft.⁽²¹⁾ Nevertheless, the emphasis on an even principle of fair distribution of power showed that the 1946 Constitution has some federal characters.

⁽¹⁹⁾ Xin Xiangyang, *op cit.*, p. 258.

⁽²⁰⁾ Chapter 10 of the 1946 Constitution described the sharing of power between the central and the regional governments. Specifically it listed the rights on several levels. On the first level were a total of thirteen fields that needed to be legislated and administered by the central government. These thirteen fields were further divided into two types: one was related to external relations such as diplomatic affairs, international trade, financial and economic affairs; the other was those which require national standardization, such as national defence and military affairs, central finance and national taxation, currency and banking systems, and standards of measurement. Next, on the second level were a total of twenty fields legislated by the central government and administered by the regions themselves. These included affairs of a local nature yet related to the nation in one way or another. Examples are laws for self-rule, the education system and the police system. Last was the third level, which spelled out affairs purely local in nature, and therefore the regions enjoyed full autonomy over these fields.

⁽²¹⁾ Yin Xiaohu, *Constitutional History of Modern China*, Shanghai People's Press, 1997, pp. 245–6.

(e) The Constitution of the Soviet Republic of China

It is well known that before 1949, the Chinese Communist Party was for a federal system in China. This was not only a result of the international factors of that time, but also indicated the federal inclinations of some of the Chinese communist leaders. For instance, Mao Zedong in the early days of his political career once called for the establishment of a federation in China.⁽²²⁾

In particular, Clause 14 of the Soviet Republic of China Constitution passed in January 1934 stated discreetly that the Soviet Republic of China would be federal in nature. Thus although this constitution applied to only small parts of China, it was nevertheless significant in its own right.

(f) "One Country-Two Systems"

The concept of "One Country-Two Systems" remains very much debated. While the common view of experts is that of which this was in effect still very much a "one-system" situation, others, though admitting so, saw in it the potential to develop into a true "two-systems" regime.⁽²³⁾

Yet another view worth noting is that which saw "One Country-Two Systems" as something completely new, different from either a centralized or a federal system. Under this interpretation, "One Country-Two Systems" was a unique structure which overcomes the limitations of both the centralized and the federal regimes. The proof was that dual systems had not been able to exist in either the centralized nor federal states. Also, "One Country-Two Systems" had room for special administration districts which enjoyed administrative, legislative and judicial rights. Taiwan, which is expected to become the next special administration district on the line, would even hold military rights. Therefore the degree of autonomy was much greater than that of which a state in a fed-

⁽²²⁾ Liu Di, "A Study of Federalism—Centering on Mao Ze Dong's Thought", *Waseda Daigaku Hokenronshu* No. 95, 2000.

⁽²³⁾ The common view of experts is that "One Country-Two Systems" was in effect still very much a "one-system" situation.

eration or an administrative district in a centralized regime could ever have.⁽²⁴⁾

In this way “One Country-Two Systems”, while making possible a centralized government covering China as a whole, at the same time also enables a relationship between the country and its regions which is not unlike that of a federation.

3. The Future of Chinese Federalism and the Chinese Constitution

The debate over form of state structure started after the birth of the modern state. Since the 1911 Revolution, the Chinese were faced with the dilemma of selecting their form of state structure⁽²⁵⁾, but, unfortunately, domestic and international factors did not allow China the time it needed to come to a proper decision. Subsequently, both the Kuomintang and the Chinese Communist Party opted instead for singular party rule. Since they were more than anxious to keep power in their own hands the moment that they have gained political control, there was not much meaning in discussing about rights-sharing with the regions.

Still, federalism managed to exert its effect in certain ways. For example, when Sun Yatsen proposed a distribution of power, he was clearly borrowing from a concept of federalism to create a mixed form of state structure.⁽²⁶⁾ In fact, the present Chinese system with its self-administrative districts is essentially “One Country-Two Systems”, and therefore federal, in characteristic.

But even now, the Chinese form of state structure continues to evolve and to absorb elements of federalism. There are several reasons

⁽²⁴⁾ Refer to Chen Hefu *On Chinese Democratic Politics* (Social Science Documents Press, 1995) Besides, Pan Shuming thinks that in order to carry out the unification of Hongkong, Macao with mainland China, we must create a new form of state structure. Yan Zheng, Pan Shuming *Theories and Practice on ‘One Country Two Systems’* (Fujian People Press, 1998) p. 49.

⁽²⁵⁾ Liu Di, “The Revolution of 1911 and Federalism”, *Comparative Law Review* Vol. 35 No.1, Institute of Comparative Law, Waseda University, 2001, pp. 1-24.

⁽²⁶⁾ Liu Di, “Federalism in China”, *Waseda Daigaku Hokenronshu* No. 92 and No. 93, 2000.

for this: the first is that China has progressed from a country ruled by one party to a country ruled by one law. (Refer to Clause 5 of the Chinese Constitution.) This means that, thanks to a national law, the country is able to maintain a stable relationship with its regions. Furthermore, with China so vast in area, centralized rule would not be able to cope with the needs of economic development; so the ideal form of state structure should take in federal features which can help to quench the regional thirst for autonomous growth. Secondly, "One Country-Two Systems" can be seen as an attempt by China to unify the country. Thus, supposing the country continues to grow and no opposing forces come from the international scene, then this paper foresees that it is very likely for Taiwan to become a part of China under the form of "One Country-Two Systems". Because it appears extremely difficult for China and Taiwan to co-exist under a centralized regime, hence this paper believes that their unification would in some way or other show federal characteristics.

Since the 1911 Revolution, there appeared in China a misunderstanding which equates federalism with the fragmentation of the country. Because of this, Chinese federalists tend to be cautious; even when proposing measures clearly federal in nature, they often refuse to admit so.⁽²⁷⁾ Nevertheless, federalism is in fact the means to unify China. After the 1911 Revolution, regional movements sprung up in the 1920s; these essentially represented a federalist campaign on a national scale, because federalism was seen as the only hope for bringing together a fragmented China. In other words, the main reason for federalism was in fact the need for unification. This is now the stance taken by China towards Taiwan. Hence, it is even possible that the Chinese government might be willing to recognize a federal relation-

⁽²⁷⁾ Dai Jitao once commented that it is not always necessary to use the word "federalism": a federation could, for instance, be called an association of provinces. For details, see Liu Di, "A Study of Federalism—Centering on Dai Jitao's Thought", *Waseda Daigaku Hokenronshu* No. 92, 94, 2000. Deng Xiaoping also said that after the unification of China according to "One Country-Two Systems", we could say that the form of Chinese state structure had federal features, but we could not call it federalism because this word would lead to understanding two China or one and a half China easily. (Taiwan Affairs Office ed., *A Cadre Reader China's Taiwan Issue*, Jiuzhou Publishing Press, p. 124).

ship.

In conclusion, this paper argues that China in future may have a multi-layered form of state structure, with both the characteristics of a centralized regime and that of a federal system.⁽²⁸⁾

Externally, it will present itself as a unified country; internally, it will encompass the features of state power in the ancient times. This new form of state structure would no doubt change how our concept of the nation state.

⁽²⁸⁾ With regards to this, refer to the concept of a "Four-Level Alliance", brought forward by Taiwanese political scholar Zhou Yangshan. Zhou predicted that China in future would be divided into four levels: centralized rule, self-administration for certain ethnic groups, One Country-Two Systems, and Taiwan. (Zhou Yangshan, "The Four-level Alliance", *China Daily*, 6 January 2001.) In 1991, Yan Jiaqi too recommended that China adopt a confederate federal system (Yan Jiaqi, *Proposing a Federal China*, Mingjing Press, 1992, p. 45).