

‘Federalism’ in Contemporary China – A Reflection on the Allocation of Power between Central and Local Government

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This article addresses two issues. The first is concerned with one important aspect of China’s constitutional structure — the allocation of power between central and local governments, as developed during the past 50 years. I analyze the approach Chinese political leaders have adopted, which is summarized in Mao’s phrase, ‘two initiatives’, in the Chinese social and political context, rather than in a context of constitutional law. I argue that it is a successful one in the sense that it is conducive to China’s modernization, peaceful power transition, and national independence. However, it may be time for China to institutionalize the evolved constitutional structure. Second, with respect to China’s experience, I suggest that in studying the constitutional development of non Western countries, we should pay more attention to its pre-constitutional condition, discover the concrete factors shaping its constitutional orders, rather than exclusively focusing on the normative factors of constitutional law, in the interests of inspiring a more positive and social-scientific study of constitutional law.

In 1949, after 22 years of military struggle, the Chinese Communists, who located their base originally in remote central China, eventually took control over all of China. The Chinese Communist Party (CCP) began to search for a basic structure to frame government which would suit China’s social development and modernization. One primary constitutional issue arising was and is how to allocate power between the central and local governments.

Ideally and generally, a geographically large country with multiple ethnic groups often adopts a federal form of political government – an institutionalized form of decentralized power-sharing between local and central governments, such as the United States, former Soviet Union and India. Positively, this form of separating powers may be inevitable and a more pressing issue in a large country than in a small one, especially in a country like China, with multiple ethnic groups

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with separated centres of residence and distinct cultures and life-styles. On the normative side, federalism may create an effective market by providing competing public goods so as to improve the political system of the country.

Considering such factors, the new China, with its multiple ethnic groups, unbalanced social and economic development among regions, should adopt federalism or a similar political structure. But China's political leaders seemingly did not ever take federalism seriously as an alternative. They had been determined to construct a unitary state since the founding of the People's Republic of China (PRC). It is open to question why this route was adopted - was it perhaps because China is a communist country, as many westerners and some Chinese scholars would like to think?

This explanation is persuasive, but unconvincing. It is a fiction coming from the thinking habitués of intellectuals, who tend - because they make a living by doing this - to exaggerate the influence of idea or theory upon social practices. Political leaders and statesmen tend to be pragmatists by and large and their decisions to a great extent are not dictated by theories, let alone theoretical coherence. They are after political success or compromise, but theoretical consistency is normally a product of scholarly retrospective rationalisation. The revolutionary history of Chinese communists proves this, for the revolution has never been led by the proletarian class as Marx and Lenin would have expected, and Chinese communists did not follow the Soviet communists' road to power.

In addition, as far as the constitution is concerned, the adoption of a unitary or federal, a centralized or decentralized model of government, is not inherently good or bad; such structures are instruments of governance, which have no independent importance out of its context. Its significance depends upon whether it is effective in pursuing a political goal (let us temporarily suspend evaluating the goal itself). Therefore, applying western constitutional theories or theoretical frameworks in studying China without an awareness of the issues China faces and the political leaders' conception of the issues faced by China from the 1950s-1980s and later (though it may be a misconception) is in my opinion a deficient approach.

With the aid of historical distance, we can identify the core issue the new China is facing in the process of 'state building',¹ that is, transforming China from a cultural commonwealth into a modern nation-state, which requires a strong central government to keep

1 Prasenjit Duara, *Culture, Power and State: Rural North China, 1900-1942*, Stanford University Press, 1988.

national unity and encourage national economic development, and to extend the power of the state into society. Consensus over the importance of this issue has been present among most Chinese elites since the early 20th century, and was even shared by communists and its former political ally and later enemy, the Kuomintang (KMT).² In one sense, Chinese communists have been carrying on what the KMT was unable to achieve during its 22 years governing China — to construct an independent, free, prosperous and unified modern China.

It is easier to articulate such a goal of building a new China than to achieve it, and indeed, sometimes impossible to achieve it, because of China's unique social conditions which have to be taken into consideration in designing China's future. According to Mao Zedong and the work of other scholars, there are essentially three such conditions. First, China is a country with various regions which have different levels of economic, political and cultural development. China had no unified market. In rural areas, the dominant economy is agriculture while manufacturing and commercial industries are concentrated in coastal regions. This general economic pattern makes rural areas relatively independent from urban areas. Without economic connections, links among various parts of China are weak, which in turn makes China vulnerable to break-up and control by warlords.³

Second, though it is said that traditional China is a highly centralised feudal society, China has never been an absolutist state. The governance of emperor historically is a political cultural one, or to some extent, symbolic. A common expression which succinctly describes the political government of pre-modern China is 'The sky is high and emperor is far'. As Fei and other scholars pointed out, pre-modern China was ruled by power-sharing between the king and the gentry class. The symbolically supreme state power had no capacity to enter into the society and mobilise social resources effectively.⁴ Chinese has no national identity, but a cultural identity. Partly because of this, pre modern China was considered 'a heap of sand'; with the invasion of foreign powers, China rapidly fell into parts under the influence of foreign powers or their agents. In addition, it is reported that during the early period of nationalist rule, there were literally millions of bandits in the society.⁵ This provides strong evidence of the incapacity of state governance.

2 The Kuomintang is the party that ruled China during 1927–1949.

3 *Mao Zedong Xuenji* (Collected Works of Mao Zedong), vol. 1, 2nd ed, Renmin Chubanshe, 1991.

4 Fei Xiaotong *et al.*, *Shengquan yu Huangquan* (The Power of Gentry and the Power of King), Tianjing Renmin Chubanshe, 1985.

5 Phil Billingsley, *Bandits in Republican China*, Chinese ed., Shanghai Renmin Chubanshe, 1992.

Third, China was a country strongly influenced by foreign powers prior to 1949. With the communist take-over, many foreign powers were suspicious and hostile against the 'communist' China. The Korean War during the early 1950's was deemed by the Chinese as a threat to the new China, and eventually China sent its Volunteer Army to the war. Even Chinese communist's friend the Soviet Union to some extent was suspicious of China's loyalty to the international communist cause and wanted to control the new China to increase the influence of the Soviet Union in the cold war. As a result, after 1956 the Sino-Soviet relationship turned cold, ideological debate began, and eventually both countries deployed a million-strong army along its borders during the 1970s. Chinese communist leaders felt a kind of threat from these foreign powers.

With the first and second constraints mentioned above, the central government of pre-modern China was rather weak. Deng Xiaoping once said that even under the rule of the KMT who claimed to have unified China, China had never really been unified as the KMT government did not extend its control to Shangxi, Guangdong, Guangxi, and Sichuan provinces, and there was no actual unification, merely a symbolic one.⁶

Perhaps, the strongest evidence comes from the revolutionary history of Chinese communism itself — their victory owes a great deal to the first and second constraints mentioned above. In his works, Mao frankly acknowledged the formulation of his revolutionary strategy was based upon such a conceptualization of China, and history proves his conception was correct and his political and military strategy successful. However, conditions once advantageous to the communists when they were a revolutionary movement become an obstacle when they formed the government. Evidently, Chinese communist leaders fully understood this and had to overcome the problem. The Chinese communist leaders did not believe that there were universally valid principles applicable to the matter of state building and decided to adopt a pragmatic approach. The unification and independence of China has been the communist party's primary goal, and a unitary state is properly regarded by the CCP as the best structure for the political governance of China.

Furthermore, a unified nation-state has been considered to be a primary condition for China's modernization ever since the early 20th century. It was the stated goal of not only the Chinese communists

6 Deng Xiaoping Wenxuan (Selected Works of Deng Xiaoping), vol. 2, 2nd ed., Renmin Chubanshe, 1994, p. 299.

but also the KMT⁷ as well as intellectuals and other social elites. In CCP leaders' eyes, without the unification of China, there was no possibility of modernizing China's economy, politics and society. From this perspective, we may also find a policy consistent since 1949 – both 'coordinating efforts all over the country as on a single chess-board' under the planned economy before 1978 and advocating 'a unified national market' under the market-oriented economy after 1978 aimed to buttress the unified basic political and legal system in China.

With such a consensus among Chinese political and cultural elites, a unitary system that emphasizes political centralization appears to be the only available choice for the new China.

Certainly, the above analysis is the most important consideration influencing the decision of China's political elites with respect to the process of state building in the long run. However, it is not the only factor. Some political contingencies have to be considered as these have played a very important role in shaping the power allocation between the central and local governments during the past 50 some years in China. Such contingencies have been neglected by many constitutional scholars in China and abroad. Certain issues have been urgent and pressing during the Mao Zedong era, a primary one being that of political succession and the potential consequences of this.

According to Mao, China's revolution during the 20th century was a *farmers' revolution* led by the Chinese communists. In this sense, Mao thought it a part of international democratic and national revolution.⁸ However, since the main participants of the revolution were farmers against feudalism, according to Mao it must have some similarities with the traditional Chinese farmers' revolution, and share its weaknesses. Mao always emphasized this point in his life and is ambivalent toward this feature of the revolution. Foreigners may not fully understand the implication of Mao's view. What worried Mao was the possibility that in the absence of sufficient modern political and social restraints, some charismatic communist revolutionaries might turn into warlords. This has been the historical experience where China's farmers had led rebellions. Dr. Sun and Mr. Jiang Jieshi encountered such problems after taking power.⁹

7 From this perspective, and retrospectively, the communists and KMT had no fundamental difference; their differences were instrumental ones. It is for this reason that the Chinese communists highly regard Dr. Sun Yat Sen, and highly appreciate the senior and junior Jiangs, and this was the basis upon which the CCP and KMT founded their corporation three times.

8 *Ibid.*, n. 2.

9 For example, Dr. Sun had to launch the northern expedition to overcome the warlords occupying the northern and central parts of China, which is the so called the

Chinese communist military powers were developed in separate rural bases to a great extent, where charismatic CCP leaders directly controlled almost everything within their own revolutionary base. These leaders had their own loyal followers and created their own armies, operating almost independently. Thus, they formed various factions within the communist party. Without a bureaucracy, the organization of such factions was typically centered around the charismatic dominance of leaders, their personal wisdom and ability. During the 22 years communist military struggle, especially during 1927–1937, such a feature of organization was not necessarily a shortcoming, rather, it may have been a strong feature of the CCP and its armed force. Accompanied with the communist party's discipline, party loyalty and shared political ideology, such a feature did not become a serious problem, though there was the Zhang Guotao event during the Long March in 1935.¹⁰

This basis upon which the CCP was organized became potentially dangerous for China's modernization efforts after 1949. After the CCP's victory, a power struggle emerged almost immediately within the party between two factions of party leaders, the CCP of the red region and the CCP of white region.¹¹ Therefore, for the first generation of Chinese communist leaders, especially Mao, such contingencies had to be considered and they had to be prepared for the worst, the disintegration of the country, the party and the military, which may lead to another disastrous civil war.

Such a danger was not apparent and imminent during the 1950s and 60s, since there was a strong political leader like Mao whose authority was universally recognized within the party. His presence may have been a sufficient condition to keep the party and the country unified. But Mao could not 'long live' and a pressing issue was that of who should succeed Mao as the next political leader. If this issue was not solved properly, once Mao passed, political chaos might ensue, political and military leaders might become military warlords, causing civil war which the Chinese communists had struggled to put an end to. Put into China's historical perspective, this issue was always the

first domestic revolution. Jiang also encountered the troubles caused by different political and military factions during his rule of 22 years.

10 Zhang Guotao was one of the earliest communists in China, who later became the supreme political and military leader of a revolutionary basis with more manpower than the army led by the CCP central committee. Zhang wanted to become the party and military chief and take over the power from the then CCP central committee during the Long March, but failed.

11 Deng Xiaoping frankly acknowledged this struggle may not be a line struggle, implying it was a power struggle. *Deng Xiaoping Wenxuan*, vol. 2, 2nd ed., Renmin Chubanshe, 1994, p. 293.

most urgent and the most important issue for every king who founded a new dynasty. The founding emperor had to deal with such an issue appropriately before his death. Chinese communists are communists, but there was no guarantee that some Chinese communists would not repeat the history of the disintegration of the country after the founding emperor passed. In this sense the most important, urgent and toughest job for the new state and Mao was not the founding of the new state, but the peaceful transition of power from the first to the next generation, to establish a good precedent to ground later development. Therefore, strengthening party discipline and the centralization of power in order to keep the country from falling apart was and is a necessary measure for the transition of political power, and the allocation of power between local and central governments is part of the measure.

Is it my speculation? I have much evidence to support my argument. This includes the Gao-Rao event in 1953, the Peng Dehua event in 1959 and the Luo Ruiqing Event in 1965; furthermore, the Cultural Revolution to a significant extent is related to this issue.¹² One may smell such an issue from the many other minor political line struggles within the party and army.¹³ Sometimes, such struggle seems furious and cruel, and many Chinese scholars often blamed Mao and labeled it a residue of feudalism, but it seems to me almost inevitable for the historical transition of China.

Is this relevant to constitutionalism and to the constitutional structure of the PRC? Many researchers would consider it a party policy issue or power struggles within the party, because to many constitutional scholars it is hard to say China had a constitutional order during Mao's era and even today. I agree with them in one sense if we consider the 'constitution' in a western term. But in my view, the constitution is not a document announcing the highest moral value or values, and not necessarily a set of normative principles, but the important practice of governing a state. A constitution is not a set of moral values, but a general guide of national political practice. Whether such a political practice is of constitutional importance depends not upon what is right

12 Cf. Quan Yanchi, *Zhouhui yu Lushan Huiyi*, Guangdong Lvyou Chubanshe, 1997; Luo Diandian, *Hongshe Jiazu Dangan*, Nanhai Chuban Gongsi, 1999, esp. ch. 18, 19; and Wo Qinli Guo de Zhengzhi Yundong, *Zhongyang Bianyi Chubanshe*, 1998, pp. 179–191, 314–317. One Marshall persuaded Peng — who challenged Mao's policy of the great leap forward — to admit his mistake by saying that, 'who can control you after Mao since you are so self confident and rebelling'. I believe this fear was shared by most CCP leaders at that time. The real reason to remove Luo Ruiqing was Luo was then the most powerful figure who actually controlled military power and police power. Though Luo was trusted by Mao, Mao had to sacrifice Luo in order to comfort others.

13 *Ibid.*

but upon whether it is important in shaping a country's political power structure and allocation of political power.¹⁴ From this perspective, China's constitutional order with respect to the distribution of powers between local and central government may be understood as evolving from political practice rather than from a documentary consensus.

The centralization of power may be a primary focus, but there are other aspects of the picture of constitutional government in China that need to be appreciated. Although the central government's authority guaranteed the unity of China and the relatively peaceful power transition, it encountered serious problems. For instance, in the field of economics, the rigid economic control exercised by the central government was problematic. This shortcoming was apparent as early as immediately after the Gao-Rao event in 1953 when a series of measures were adopted to strengthen the control by central government over local affairs to prevent the expansion of local political leaders' power. Repeatedly, Chinese political leaders tried to solve such problems, although these efforts were ineffectual, given the factors discussed in the preceding sections. However, a policy or general principle or guideline of constitutional significance evolved during the period and deserves our attention. It is called 'two initiatives', a local and central one.

This principle was first formulated by Mao in 1956, in a famous speech where Mao discussed the ten most important issues of China's socialist construction, based upon 7 years ruling experience after 1949.¹⁵ In the fifth section of this speech, Mao discussed the power distribution among the central government and local governments.

Mao began with an acknowledgement that the relationship between central and local government has always been problematic, given the conflicting interests. Mao then pointed out that *at present* the solution to this problem, under the premise of consolidating the central unified leadership, was to expand the power of local governments, to let locals have more independence in handling those affairs considered not to be of national importance. Mao thought this would be beneficial to the construction of a stronger socialist state as it would be better to allow both the central and local government the initiative to act to solve the problems flowing from the fact that China is a large country with a huge population and complex situations warranting

14 The best example may be the case *Marbury v. Madison*, which originated out of a power struggle between two parties and eventually led to the constitutional institution of judicial review, which in turn meant that the document called the Constitution of the United States had no power before the Chief Justice of the Supreme Court, John Marshall.

15 *Mao Zedong Xuanji*, vol. 5, Renming Chubanshe, 1977, pp. 267–288.

governance, rather than leaving it solely within the hands of a central government. In this speech, Mao firmly rejected the Soviet Unions' model that the central government should monopolise the control of all public affairs. Mao again mentioned the Gao-Rao event, the party factions, and said strengthening central power after the event was right because Gao-Rao had used decentralization to further their political ambition, but the CCP and central government should not go to extremes so as to make local government dependents of the central government.

Mao listed the symptoms of over-centralization in China, offering three suggestions to solve such problems. First, to prevent over-centralization, Mao suggested increasing levels of consultation between local and central governments, especially encouraging the central government to consult local governments. Second, Mao divided economic affairs into two categories, one was and should be mainly managed by central government, such as heavy or large-scale industries, another is and should be taken care by local governments, such as agriculture and commerce. Third, Mao thought the central government should reorganize its regulatory agencies. One type should directly manage the large enterprises, while the managing institutions should be under supervision of local governments. Another should be concerned only with the formulation of guiding policy, with working plans and implementation falling under the ambit of provincial and local governments. Fourth, Mao emphasized these measures were not permanent, that is, not to be institutionalized, as they were temporal in nature. However, though such measures are not institutional, they represent efforts to redistribute and allocate power between local and central governments.

Mao has long been considered a pragmatist, but his proposal was not only a summary of the communist party's governing experience. The rest of the discussion suggests Mao did read works about foreign countries; he drew some experience from such readings. Mao said in this lecture that dealing with the problem between central and local governments was a very important issue to a large country like China and to the CCP; and Mao further stated that the CCP could and should learn from the experience of some Western/capitalist countries, evidently referring to the United States. According to Bo Yibo, an important communist figure at that time, Mao read many works about western countries' political structure.¹⁶

¹⁶ Bo Yibo, *Ruogan Zhongda Jueche yu Shijian de Huigu*(Recall of Several Important Policy Decisions and other Events), vol. 1, Zhonggong Zhongyang Dangxiao Chubanshe, 1991, esp. ch. 19.

Mao also mentioned the constitution adopted by China in 1954, just two years ago, emphasizing the provisions relating to legislative power. He said that legislative power belongs to the central government, but this was subject to the restraint that this should be exercised consistently with the basic policy and principles of the central government, with local governments having the power to formulate and adopt their own rules, ordinance and regulations, which is not restrained by the constitution according to Mao's authoritative interpretation. Mao said that China needs unity, but also needs to solve particular problems. To construct a stronger socialist country, a powerful unified central leadership, national plan and a unified discipline is necessary, and any violation of it is not permissible. However, at the same time, local initiatives must be fully encouraged to take care of local particularities as long as this is done in a manner which consolidates and supports the national interest.

Mao even extended this model to various levels of local government, that is, between counties and provincial government. Finally, Mao acknowledged that CCP leaders then did not have sufficient experience of governance and as such, it would be premature to institutionalize current practice.

Evidently, what Mao talked about was an issue or issues to be dealt with by federalism. I would like to define what he suggests as a non-institutionalised federalist approach. However, the question still raised is why Mao approached this federalism issue in such a non-institutionalised manner, leaving the boundaries of power between local and central government flexible and shifting?

In support of Mao's non-institutionalised approach, it may be argued that under a normal state of affairs, federalism is an ideal type bearing in mind that Mao discussed the issue at a time when China had recently been founded and was facing difficult international conflicts with the U.S and Soviet Union. China was then under an unprecedented historical transition from a traditional cultural commonwealth to a modern nation state, facing the tough task of state-building, and the issue of peaceful political succession. Since there was not much experience, once the political order was institutionalised, it would be very difficult to adjust or even to modify. Political leaders had to prepare for the worst, though try for the best.

Further, institutions evolved and could not be designed once for all. The evolution of the American constitutional order is a good illustration. It took almost more than 40 years since 1775 when the American Revolution broke out, or more than 30 years since the adoption of U.S. Constitution in 1887 for federalism to take shape, as best embodied in the symbolic decision of Chief Justice John Marshall in *McCulloch v.*

Maryland, decided in 1819.¹⁷ Although with the aid of foreign experiences, China had to develop a constitutional structure fitting its needs, and such a development could not come overnight. Even when Mao died in 1976, the new China had been founded less than 30 years. For a country searching for modernization, this time-span may not be enough to accumulate sufficient experience to crystallize a solid constitutional structure for the future. Therefore, in my opinion, Mao's 'two initiatives' approach may be an experimental approach for China's constitutional evolution. It of course may not be the best one, but a reasonable one in that historical context. As noted above, Mao did emphasize what he proposed was a temporary one. He did not intend to make it a sacred doctrine.

A better defense for the approach is not its consistency with a theory, but its social practice and consequences. By this test, it is argued that this non-institutional approach in general has been successful. In the past 50 years and more, China's national unity has been greatly enhanced, provincialism weakened, the economic links among various regions strengthened, and the economy has become nationally integrated through repeated processes of 'taking in' (centralization) and 'setting free' (decentralization). The danger of China falling apart is growing remote, though the political control of central over local government has evidently decreased.

The trend towards decentralization has continued in the past 20 some years. If there was during the 1980s–1990s a shadow of economic 'feudalism' in southern China, with the rapid development of Shanghai, Jiangsu, Shandong and Tianjin, the danger has almost disappeared by now. To a great extent, this development owes itself to the market economy. But, in the process of market-oriented economic reform, the authority of the central government has been a key element. For example, during the 1980s the general policy was decentralization, but in the later 1980s when the 'overheating' of China's economy requiring an urgent adjustment to prevent undesirable and dangerous inflation, Deng Xiaoping reemphasized the authority of central government. He criticized some policies of local government officials as being contrary to national policies.¹⁸ Deng Xiaoping even cited the instance of Mao's era to support the centralization of central government authority, and reassigned some local government officials in order to weaken their influence over local affairs. During the middle of the 1990s, in order to prevent the potential economic crisis caused by overheating of the economy, the central government proposed

17 17 U.S. (4 Wheat.) 316 (1819).

18 *Deng Xiaoping Wenxuan*, vol. 3, Renmin Chubanshe, 1993, p. 319.

'macro-economic regulation' to enhance the central government's power over the national economy and to enforce national economic policies. But this time, the central government adopted more economic measures, such as financial and monetary policies, rather than administrative measures. And such measures were effective before the coming of the Asian financial crisis in 1997.

The change of measures needs to be noted. Most observers would consider it a change of policy and strategy, flowing from accumulated experience in governance. But underlying these changes is the evolving social context which is informed by various factors. The first one is the change of local political leaders, as they are no longer charismatic revolutionaries with a military background, but political leaders with delegated power from central government, operating with the help of an emerging civil bureaucracy. The second factor is national economic integration. The third is the increase of available and effective economic regulatory measures by the central government. All these factors contributed to the change of strategy of governance.

Though the two-initiative approach towards governance has been comparatively successful, it has its weaknesses. The fundamental one is that it is a non-institutionalised approach, such that the constitutional structure is vulnerable to changes in political leadership and policy shifts. The boundary between central and local government powers is flexible and shifting, leading to a situation where the expectation of stability of rules, a facet of the rule of law, cannot be sustained. The lack of stable expectation may encourage the opportunism of central and local governments to change rules arbitrarily, and bring with it moral hazards. Since the reforms of the latter part of the 1970s, with the decentralization of power local protectionism has been widely noted and criticised, and local governments have often adopted rules and regulations and administrative measures beneficial to local priorities, against the national interests. The common Chinese person, especially businessmen, often complains. Against this background, some Chinese scholars recommend the unifying of law-making power and law enforcement.

Such problems are certainly there and sometimes quite rampant, but this potential side effect should not be forgotten in pursuing a desirable goal. The concern is that if centralisation is over-emphasised, conferring excessive power on central government, the initiatives of the common people and local governments may be suppressed, and economic development may be discouraged. But on the other hand, I also recognize that without strong government and effective national policies and policy implementation, the gap between different regions may increase widely so as to threaten national unity. Since China's

current political leaders are no longer charismatic like Mao and Deng, it is vital for China to pay more attention to the rule of law and the authority of central government.

Therefore, it appears that the basic framework of China's constitutional structure in allocation of power between local and central should remain, though many foreigners and even Chinese intellectuals would consider or criticize such an approach as too authoritarian. In my view, their comments and criticisms are right only outside of China's social context and with reference to Western countries and traditions, but constitutional ordering is a matter of practice, not mere theorizing.

Within the framework, however, some adjustment can be and should be done. The goal should be to gradually institutionalize the practice of the 'two initiatives' approach, so as to make the allocation of power more constitutionalized, in the sense of being less under the influence of the will of political leaders and social contingencies. Indeed, reform over the past 20 years appears to move progressively in this direction. A manifestation of this is in the creation of a dual tax system, relating to local and state tax. This system provides local governments with their own revenue to finance local governmental operations, providing public goods for local residents; furthermore, it presents a greater incentive to improve local conditions to attract investment and to develop the local economy. Local governmental officials are no longer only responsible to the central government, but also to local residents. It also creates a market for economic competition and in turn, political competition, since economic development is impossible without some reform or adjustment of local government structure and the public goods provided by the local government.

Another change of constitutional importance is the restructuring of the banking system during the past several years. Previously, every province in China had a branch bank, which is subject to dual control from the provincial governments and the central bank. This structure gives provincial leaders substantial control over the operations of the branch bank and its personnel. Local governments not only can demand but sometimes actually order the branch bank to make loans to local enterprises to keep them running. This practice not only greatly reduced the control of central government, but also in today's social context, brings with it the risk of national financial crisis, which is a greater danger than before to the nation as a whole. In the late 1990s, China abolished the old structure of the banking system and established nine branch banks, each of them covering the banking businesses of two or three provinces. This new structure almost totally eliminated the influence of provincial governments upon the

operation of the branch banks and greatly enhanced the power of the central bank and central government in its macro regulation of the national economy. The provinces became more provincial in the sense that their control over this field was no longer subject to its administrative jurisdiction but to some form of external scrutiny.

Both of these changes bear constitutional significance, though many Chinese scholars of politics and law – even constitutional lawyers who consider only the separation of powers, direct elections and judicial review of such political issues as being of constitutional importance — do not fully realize this. I believe their approach is fundamentally wrong and academically misguided. The creation of the dual tax system is important as this not only recognises the separate governments between local and central, but with different revenue resources it make the operation of local government less dependent upon central government, allowing local provinces a government of its own rather than being the mere agent of the central government. Though tax is about money in a broader sense, this change has far-reaching implications. Indeed, tax in American legal history has been an issue of constitutional importance, and was a subject of constitutional amendment.¹⁹ Similarly, the first and most influential case relating to federalism in American constitutional law, *McCulloch v. Maryland*, relates to the constitutionality of state taxation over a federal bank.

There are other important proposals under consideration, such as reducing the farmer's economic burden by central government, making all teachers of elementary schools and secondary schools in rural areas civil servants of the central government. Although such measures are practically difficult and has not fully implemented, it is clear that certain matters, such as those relating to civil rights, should be regulated by the central, rather than the local government.

I should acknowledge that such measures were not considered constitutional in the policy designer's mind when they were adopted, but this fact does not reduce their constitutional significance, since one's intention never determines the meaning of one's action. What a Chinese legal and constitutional scholar should do is to elaborate its constitutional significance and urge its institutionalisation. In this process, I believe a stable structure concerning the allocation of power between local and central government will emerge; it may not be called federalism as commonly understood by Western scholars, but it will be China's brand of federalism.

¹⁹ U.S. Constitution, Amend. 16.