

# **Involving and Integrating "Capitalist" Special Administrative Regions in the "Socialist" National Development of China: Squaring the Circle of "Two Systems" in "One Country"**

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Hong Kong and Macao are Special Administrative Regions (SARs) of the People's Republic of China (PRC) established in 1997 and 1999 respectively to cater for resumption of exercise Chinese sovereignty over these "capitalist" territories. The PRC's basic policies regarding Hong Kong and Macao, recorded in the two Joint Declarations the PRC concluded with the United Kingdom and Portugal respectively, provide that the "current social and economic systems in Hong Kong/Macao will remain unchanged" and that after the establishment of the SAR, "the socialist system and socialist policies shall not be practised in the [Hong Kong SAR/Macao SAR] and that Hong Kong/Macao's previous capitalist system and life-style shall remain unchanged for 50 years". Although the two SARs had strengthened trade and investment co-operation with the PRC from 2003 through bilateral arrangements, the PRC's Central Authorities have since 2010 included the two SARs in their Five Year Plans for national economic and social development, the principal instrument of the Chinese socialist market economy. Also, co-operation of regions of the Greater Pearl Delta Region that involved the two SARs has evolved under the central leadership of the Communist Party of China into the ambitious plan for developing the Guangdong-Hong Kong- Macao Greater Bay Area whose outline development plan, published in 2019, encompasses and anticipates developments in fields beyond trade, manufacturing, service provision and innovation, with objectives that would seek to remove barriers in the movement of people, capital and information and harmonisation in matters of health, social security and social governance in nine regions of Guangdong Province and the two SARs. Although scholars have pointed out Hong Kong's dependence on the PRC's economy and economic and financial policies and discussed the political economic dimension of the "One Country, Two Systems" policy the Central Authorities have practised in relation to the two SARs, the Chinese Party State's inclusion and fostering of the "capitalist" SARs for national economic development of the Chinese "socialist" state is a recent phenomenon that is under-researched particularly regarding the implications on the Central-SAR relationship. This Chapter seeks to provide a foundation for research on this particular field through surveying the various Party and State institutions (including the Party's leading panels and the State Council's National Development and Reform Commission) that made plans and decisions at the Central level to guide the developments and supervise the implementation of the plans and decisions at the local/SAR level, and identifying and discussing the issues such planning, co-operation, coordination and harmonisation would involve and impact on the SARs' structural, systemic and normative arrangements prescribed under the relevant Basic Laws. To conclude this Chapter, it is proposed to consider the validity of this contradiction: That the Centre-planned economic and social developments for the Hong Kong and Macao SARs lie in their imposition of the national socialist system on two regional economic and society that is guaranteed by its foundational law to be capitalist in their systems and with each of its own way of life.

## **Designing Macau's Future: A Brief History of the Drafting and Early Implementation of the Macau Basic Law**

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In April 1988, PRC leaders undertook to prepare for the orderly handover and initial administration of Macau by drafting a charter or mini-constitution for the city, the *Macau Basic Law* (MBL). To do so, Beijing reconstituted a consultation method it had deployed in Hong Kong by creating a special commission known as the Basic Law Drafting Committee to debate the draft and proffered the *Hong Kong Basic Law* as their template. The resulting MBL differed in significant respects from its predecessor document, however, as Portuguese negotiators had pursued a different set of bottom-line values based on its respective colonial experience. For instance, neither the *Sino-Portuguese Joint Declaration* nor the MBL contains any aspirational statements about achieving universal suffrage; instead, the Portuguese demanded and won Beijing's concession on recognition of Portuguese passports for Macau residents. For this and other reasons including decades of *de facto* mainland supervision of the city, closer cultural ties, and the inability of the Portuguese regime to suppress rampant corruption and crime, the formal introduction of PRC authority and initial implementation of the *Macau Basic Law* was a relatively smooth process. Indeed, the MBL's nexus for socioeconomic autonomy allowed casino capitalism to propel the city's meteoric economic rise during the first twenty years of implementation between 1999 and 2019. However, that economic powerhouse model also exacerbated the income gap between the rich and the poor, fueling underlying social tensions. Whereas the MBL has provided vast economic opportunity for many, its freezing of representative institutions in a mid-20<sup>th</sup> Century Portuguese colonial configuration has served to suppress critical voices and disenfranchise many of those left behind from exercising their voice in governance. The Macau Government has responded to these challenges by focusing on the twin pillars of social stability and social welfare, though economic diversification proves elusive and political diversification unwelcome. This chapter appraises those successes and failures to date, over the first two decades and more of formal PRC governance. Ultimately, the success or failure of the *Macau Basic Law* and the PRC's "one country, two systems" model will be judged in 2049: the year that represents the end of Macau's 50 years of autonomy guaranteed by the MBL as well as the 100<sup>th</sup> anniversary of the foundation of the PRC. Thus, Macau's success will reflect the PRC's success, and it remains to be seen if the dialectic will end in extension, convergence, or assimilation.

## **China's Constitutional Court vs Taiwan's Constitutional Court: A Holistic View of the Council of Grand Justices (1948-2007)**

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Based on the newly opened diaries from the longest serving Presidents of Judicial Yuan in the Mainland China, Ju Zheng (1932-1948) and at Taiwan, Xie Guansheng (1958-1971), and based on a decade long continuous interview of the longest serving Grand Justice in Taiwan, Weng Yuesheng (1972-2007), this proposed paper will shed new lights to the history and legacies of the first post-WWII constitutional Court, the Council of Grand Justices, which was first incorporated into the Chinese judicial system in 1948 and continued to play a significant role especially during the post-1989 court-centered constitutionalism in Taiwan. However, the current wide and glorious constitutional law narratives of the triumph of Taiwan's democratic transition simply have given all the credit to the later-comer Taiwan's constitutional court from the 1990s up to now. In the meanwhile, there is a sheer negation of the role of the Council of Grand Justices for the constitutional transition from the Mainland to Taiwan in the perspective of *longue duree*. The Council of Grand Justices started from the mainland China, quickly became the most active constitutional court across the cold-war globe in the names of the whole China and the liberal democracy especially from 1948 up to 1971. Therefore, as a historical matter, there was an untold leader of judicial review in the mid-20<sup>th</sup> century, the China's Constitutional Court under the leadership of Wang Chonghui(1948-1958) and Xie Guansheng. As a reality, however, the history and legacy of the China's Constitutional Court has been long forgotten, or intently downplayed (very often ignored), by scholars from both sides of the Strait, thus misleading the scholars in general in the field of comparative constitutional law. With a goal to provide a revision in history, this proposed paper will establish a holistic view of the development of the Council of Grand Justices from mainland China to Taiwan. The contribution of this proposed paper to the entire book project will be its historically grounded analysis of the greater Chinese constitutional tradition for a greater China.