

A Commentary on Professor Wang's Lecture

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I would like to talk about three things.

1) The essence of the 'one country-two systems' concept

In his lecture, the professor identified the pragmatic compromise and inherent contradiction at the heart of the one country-two systems concept as tension between sovereignty and autonomy. I would like to focus on the nature of this apparent compromise.

It is generally thought that the one country-two systems concept is a compromise involving the sovereignty of China and the autonomy of Hong Kong. Is that all there is to it? Rather than being simply a case of pragmatically reconciling the conflicting interests of China and Hong Kong, I think it is more an expression of the inherent contradiction involved in the concept of socialist market economy: the incompatibility of economic liberalization and the one party political system. Hong Kong's continued economic growth is not only an asset in terms of the money it brings into China, but, more importantly, it is a vital part of China's market economy and the development of its economic policy. This way of thinking has found expression in the Basic Law of Hong Kong - for example, in Articles 109 ("the maintenance of the status of Hong Kong as an international financial centre") and 108 ("taking the low tax policy previously pursued in Hong Kong as reference"). The Basic Law is a written manifestation of China's attitude towards Hong Kong and, rather than giving the people of Hong Kong the freedom to choose their own destiny, or indeed facilitating the smooth return to China, it establishes a compulsory system and a specific role for Hong Kong - to continue to prosper for at least the next 50 years. The one

country-two systems concept and the Basic Law should be seen in this light; it is not a legal/systemic embodiment of the principle of political autonomy conceded through negotiation and, thus, it is not really a compromise. In essence, it is a declaration of a concurrence in economic interests. As for political autonomy, an issue on which genuine conflict can arise, the decision made, if any, was to procrastinate.

2) The reality of Hong Kong people governing Hong Kong

If we think about it in this way, the idea of political autonomy becomes a problem. This concept - including the oft-repeated phrase 'Hong Kong people governing Hong Kong' - has become an integral part of the one country-two system concept's perceived compromise. Political autonomy has been accepted as a prerequisite for economic development but this may prove problematic in the future as it is at odds with the one-party government system in China as a whole. How tenable is the compromise? Taking the definition of 'Hong Kong people governing Hong Kong' to mean a 'high degree of autonomy' as a benchmark, I would like to look at how the members of the Legislative Council are elected.

For a constitutional scholar in Japan, regional self-government means not only relative independence of the local government versus the central government, but also the autonomy of the citizenry in the regional government. Applying the latter standard to the case in hand, a high degree of autonomy in Hong Kong must embrace the rights of Hong Kong's inhabitants to be fairly represented in the local government. The autonomy of the people of Hong Kong in this sense, however, is limited. Article 68 of the Basic Law states that eventually all the members of the Legislative Council will be elected by the people of Hong Kong but, if one looks at Annex 2, it becomes clear that up to 10 years after the hand-over only half of the Council's members will be elected directly. From 2007 this law can be amended but only after a lengthy process; first, two thirds of the Council must support an amendment, the Chief Executive consent must then be granted and, finally, the amendment must be reported to the Standing Committee of the National People's Congress in

Beijing for the record. It is therefore unclear how and when the 'aim' mentioned in Article 68 will be realised.

If one considers the fact that the Chief Executive has significant presidential style power yet is not elected directly - this can only be changed in the same way as described above (Art. 45 and Annex 1) - one has to question the degree of autonomy in Hong Kong after the return to China. One could argue that the system in Hong Kong is designed to protect the interests of China by ensuring that there will always be a considerable number of Chinese sympathizers/supporters in the Council.

Considering this situation, what degree of autonomy does Professor Wang think exists, theoretically as well as practically, in Hong Kong? From what I had gathered at the lecture, the professor believes the Chinese respect and will uphold the two-systems notion and the Hong Kong side understands the importance of being part of one country. I feel he is being somewhat optimistic. Despite the indefinite - and thus flexible - pledge to implement fully democratic elections, due to the inherent contradiction mentioned above, there is a real possibility of the system never attaining its promise of full autonomy.

3) The restrictions as regards amending the Basic Law

In his address, the professor discussed the power to interpret and the power to amend the Basic Law as concrete examples of the tension between sovereignty and autonomy. As a constitutional scholar I listened with great interest. I would like to comment on the power to amend the Basic Law.

As mentioned in the course of the lecture, only the National People's Congress has the power to amend the Basic Law. Article 159, however, qualifies the power to amend the Basic Law: no amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong. But, since the Basic Law contains no guidelines - unlike the German Basic Law (Art. 79.3) - as to what these policies are, there exists a problem regarding the interpretation of Article 159. As the power to interpret the Basic Law is vested in the Standing Committee of the

National People's Congress (Art. 158), albeit with the proviso that it consult the Committee for the Basic Law of HKSAR, whether or not a proposed amendment is *ultra vires*, that is, exceeds the power to amend, cannot be judge by HKSAR itself. For example, as pointed out by the professor, supposing the National People's Congress does go ahead with an amendment that conflicts with HKSAR's commitment to maintaining Hong Kong's capitalist system for 50 years (Art. 5), what mechanism could repeal the amendment? It is unrealistic to expect that in such a case the Standing Committee will review the amendment and find it in violation of Article 159. Further, considering that there are no restrictions on the power of the National People's Congress to amend the Constitution of China, placing such a restriction on their power to amend the Basic Law, which is obviously inferior to the Constitution, would not be consistent.