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**The Legislative Decentralization in China in the Reform Era: Progress and Limitations. By Yang Feng. Wolf Legal Publishers, Oisterwijk 2019. ISBN 978-9-46-240526-4. Pp. xi, 204. 59.70 Euro.**

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### I. Introduction

It goes without doubt that in the wake of the Reform and Opening-up Policy (改革开放) initiated by Deng Xiaoping in 1978, the People's Republic of China has undergone a spectacular market-oriented transformation of its economic system. The approach towards a market economy has created a momentum of its own and entails the necessity of decentralized structures. Administrative decentralization in the form of transferring decision-making powers from the center to local governments so as to render local leaders more responsive to economic demands was an important means to pave the way for the transition from China's centrally planned economy to a market economy. Not only in the economic arena but also in the legal field, remarkable progress has been attained: In the 1970s, the Chinese legal system was still in its infancy. Economic growth, entailing dramatic changes compared to the previously existing Mao era, necessitated a rather quick creation of a legal system. Scarce research has been produced on how the decentralization process shaped the development of the Chinese legal system. It is only through the decentralization of legislative competence that effectiveness and the expansion of the Chinese legal system have been achieved. In his book "The Legislative Decentralization in China in the Reform Era – Progress and Limitations", Yang Feng develops a broad understanding of a decentralized multi-tier legislative system by drawing the reader's attention to all five of the sub-systems within China's legislative system. With analytical clarity, the author provides profound insight into the legislative procedure and identifies achievements as well as flaws in China's legislative system.

### II. Decentralization Theory

Yang Feng begins his thesis by laying the theoretical and historical foundation for the central theme of his book, "legislative decentralization". He notes that legislative decentralization is a part of China's broad decentralization reform (11). When defining decentralization, Yang Feng adopts a predominantly economic view. For him, referring to economists and political scientists such as Jonathan Rodden, Wallace Oates and

Friedrich August von Hayek, decentralization means a vertical distribution of authority, a shift of authority from the central government towards local governments focusing on economic efficiency. A decentralized form of government entails several economic advantages. For example, decentralization encourages local divisions to develop their full potential in order to best react to area-specific needs and people's desires. It unleashes an atmosphere of experimentation (12, 14) in the manner that local officials are able to try out new ways of problem-solving.<sup>2</sup>

China has undergone different stages of decentralization. Yang Feng differentiates between the decentralization phase before the Reform and Opening-up Policy in 1978 and the decentralization efforts during the reform era (19, 31). Whereas in the late 1950s the radical administrative decentralization of economic powers had rather disastrous economic consequences (one can think of the Great Leap Forward), the decentralization reforms from the late 1970s have been far more comprehensive and have fostered market-oriented reforms developed and tested by local units which are fed back into official policy making or incorporated into national law (31).

According to Yang Feng, a balance should be achieved between a centralized, unitary form of government on the one side and a total decentralized form of government on the other side. A centralized form of government, where decision-making responsibilities are concentrated in one single authority, not allowing any local-level experiments, may eventually stagnate due to lack of flexibility and a missing impetus toward innovation. However, a total decentralized form of government may – owing to difficulties in coordinating the various autonomous divisions – lead to chaos and anarchy. Yang Feng strives to evaluate China's process in seeking an ideal allocation of powers between the central government and the decentralized units (14).

### III. National People's Congress and Its Standing Committee

Article 8 of the Legislation Law of 2000, as well as of the revised version of 2015, provides a list of exclusive powers to be exercised only by the National People's Congress (NPC) and its Standing Committee (NPCSC). Yang Feng argues that China is in line with the common practice in federal countries. To underpin his statement, he undertakes an interesting comparison between the Chinese Legislation Law and the constitution of federal countries (40). He states that the list of exclusive legislative powers of the national government with regard

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<sup>2</sup> Sebastian Heilmann, From Local Experiments to National Policy: The Origins of China's Distinctive Policy Process, in: The China Journal 2008, p. 1.

to ten subject-matters resembles the practice in mature federations, such as the United States.

The author takes a closer look at the imbalanced development on law-making procedure as between the NPC and the NPCSC (46, 47). In contrast to the NPCSC, the development of the NPC's law-making procedure has stagnated. The revised Legislation Law of 2015 confers upon the NPCSC and its working staff more power to engage actively in law-making. He attributes the underdevelopment of the NPC's law-making procedure to the low frequency, large size and short duration of the plenary meetings of the NPC. The author suggests that in order to overcome the tension between the NPC's *de jure* role as the highest law-making power as prescribed in the constitution and the rise of the NPCSC in law-making, the NPC should fulfil a consultative function rather than a legislative one (60).

Yang Feng stresses that the national lawmakers have become more cautious in law-making and willing to improve the quality of law-making (54–56): First, the more recently adopted national laws are more detailed and comprehensive, and endeavor to create a uniform legal framework by concretizing existing local regulations. Second, a unification of separate national laws can be observed. An example is the replacement of the existing laws on foreign investment enterprises with one law governing all the foreign investment enterprises. The third aspect reflecting the improvement of law-making quality is frequent law revision; laws are constantly revised and adapted to the dynamically changing conditions of today's global economy.

#### IV. The Legislative System of the State Council

The State Council is the highest administrative organ of the central government, and it is empowered to enact administrative regulations and rules that, as Yang Feng rightly states, "constitute the bulk of legal documents promulgated at the national level" (61). The principal legal framework on regulation-making and rule-making procedures consists of the Regulation on the Formulation Procedure of Administrative Regulations and the Regulation on Rulemaking Procedure, both of which were issued by the State Council in 2001. Yang Feng contends that even though public participation has now been incorporated into the regulation and rulemaking process, it is still at its initial stage of development since the prerequisites for soliciting public opinions (e. g. the organization of the hearing, the identification of the matters to be discussed and the manner of selecting participants) remain vague (72, 73).

Besides enjoying inherent law-making power, the State Council also acts upon authorization: In the 1980s, extensive legislative powers were granted to the State Council. Most strikingly, in 1985 the national legislature issued a decision giving the central government the power to formulate interim regulations concerning economic structural reform. Due to the broadness and vagueness of the empowerment decision, the State Council enjoyed great leeway to enact regulations and

soon became a powerful law-making institution. The author convincingly argues that the scope of the recent legislative delegations to the State Council is much narrower compared to the overly broad delegation of powers exercised in the 1980s (79). Article 10 of the Legislation Law of 2000 stipulates that the empowerment decision must be specific with regard to purpose and scope. The Legislation Law of 2015 even imposes a requirement for a clear definition of time periods for the exercise of delegated legislative power. Thus, the Legislation Laws put an end to non-transparent, blanket legislative delegations.

#### V. The Local Legislative System

Yang Feng explains the extent to which the local legislative system has undergone "spectacular development" (83) in the reform era, which can be seen as a successful decentralization process. The expansion of local legislative power was initiated in 1979 with the passage of the Organic Law of Local People's Congresses and Local People's Governments: Provincial people's congresses and their standing committees were granted the power to enact local regulations. It was only in 1986 when provincial capital cities and relatively large cities approved by the State Council were allowed to enact regulations.

Yang Feng emphasizes that the 2015 amendment of the Legislation Law expands legislative power from 49 cities to more than 280 cities nationwide, done by substituting the former term of "relatively large cities (较大的市)" with "cities divided into districts (设区的市)". Yang Feng notes that in spite of the increase in the number of local legislative bodies, their legislative autonomy is restricted compared to that of previous relatively large cities (88, 89). The amended Legislation Law restricts local legislative power to issuing local regulations on urban and rural development and administration, environmental protection, and historical cultural protection. This is to say, the legislative power of a former "relatively large city" has been limited to these specified fields, whereas before the enactment of the amended Legislation Law, the regulatory scope of legislative power enjoyed by relatively large cities had not been expressly restricted to certain fields. For the author, this represents an interesting phenomenon, showing on the one hand a continuous trend of legislative decentralization; yet on the other hand the reduced scope of legislative power reveals how the central government is trying to undermine local legislative power (101). Still, one could also argue – and this an aspect not fully taken into consideration by Yang Feng – that the limitation of local legislative power to specific fields is necessary so as not to repeat the fatal experiences of destructive decentralization during the Great Leap Forward.<sup>3</sup> In that case, the extensive distribution of authority to local governments led to an abuse of power

<sup>3</sup> See for example WU Zeng (武增) and LI Ju (李菊), Analyzing the Legislation Law of the People's Republic of China (中华人民共和国立法法解读), Law Press China (法制出版社) 2015, p. 264.

by local governments, which is something the revised Legislation Law aims to prevent.

## VI. The Legislative System in National Autonomous Areas

Yang Feng also analyzes the legislative power of the National Autonomous Areas. China has recognized 56 ethnic groups. In order to take account of their different languages, cultures and religions, the PRC adopted the system of Regional National Autonomy in the mid-1950s. Ethnic self-government is constitutionally recognized, Article 4 (3) and Article 115 of the Constitution. There are 155 autonomous areas, covering 64 per cent of the PRC's territory.

Yang Feng highlights that the most distinctive feature of autonomous legislation compared to ordinary local legislation lies in the fact that autonomous legislation can modify higher-level national laws and regulations (106). This is to say, in order to meet the significant regional differences, ethnic autonomous areas are entitled to modify the application of national law taking into consideration the political, economic and cultural circumstances of the ethnic minorities at issue. However, the exercise of modification powers is under central supervision. Autonomous regulations in ethnic autonomous areas become effective only after being approved by the standing committee of the higher-level people's congresses, Article 75 (1) of the Legislation Law of 2015. According to Yang Feng, the approval requirement has been the primary reason for the inactivity and underuse of autonomous legislation (111, 112). He outlines that a removal of the approval procedure is not an option since the autonomous regions are in need of financial assistance from the higher-level governments (127). Instead, he suggests that autonomous areas and the central government should seek to improve cooperation and strengthen their interaction (127). Also, Yang Feng argues for more detailed rules on the approval procedure that should lay out the criteria and time limits for higher-level approval.

## VII. Special Economic Zones

In his oeuvre on legislative decentralization, Special Economic Zones (SEZs) play an important part. Yang Feng describes their development as "one of the most inspiring phenomena" (129). There are altogether five SEZs, namely Shenzhen, Zhuhai, Shantou, Xiamen and Hainan. The author provides a thorough description of the legislative delegation made to SEZs and the scope of SEZ legislation, and he illustrates to what extent SEZ legislation introduced a set of fundamental rules for a market economy in China by looking chronologically at the development from the 1980s until now.

The author identifies two stages of legislative delegation (132, 133), the first stage lasting from the early 1980s and having been initiated by the empowerment decision of November 1981 authorizing the provincial people's congresses and their standing committees

in Guangdong and Fujian to enact separate economic regulations for SEZs. The second stage commenced in 1992, building upon the empowerment decision of 1992 that allowed for a further decentralization of legislative power to people's congresses and standing committees of the SEZs' cities. Yang Feng reveals that with the passage of the Legislation Law of 2000, the people's congresses of the cities where SEZs are situated (the so-called relatively large cities) did not only enjoy local legislative powers but also delegated legislative power (133). Still, it would have been interesting to see how the author evaluates the fact that on 1 July 2010, Shenzhen SEZ was expanded to cover the whole city, levelling out the difference in the geographical scope of application of the two types of SEZ regulations.

Similar to the authorizations to the State Council in the 1980s, the legislative delegations to enact SEZ regulations are very broad and vague. Yang Feng discloses their inconsistency with the Legislation Law of 2000 since they do not specify their scope and purpose as required by Article 10 of the Legislation Law (137). This is a very significant finding, but one can go even further and question whether these empowerment decisions are at all in accordance with the Chinese constitution. When analyzing the scope of SEZ regulations based on the empowerment decisions, Yang Feng underlines the excessive modification power of SEZ regulations. The vague limits curbing the modification power may lead to an arbitrary use of modification power (140).

He then offers an overview of SEZ legislation by concentrating on the most successful SEZ, namely the Shenzhen SEZ. He pinpoints three different legislation periods. In addition to his elaboration on the specific regulations relevant for each period, he lists them in clearly structured tables, which helps the reader gain an in-depth understanding of the diverse regulations promulgated by the Shenzhen SEZ as regards areas of labour law, land use rights, company law etc. The first stage was identical to the first legislative delegation stage lasting from 1981 until 1992, in which a breakthrough in the economic system was achieved. The period from the early 1990s until the passage of the Legislation Law in 2000 marked the second period, fulfilling the political aim of achieving a "socialist market economy system". The regulations enacted from 2000 until 2015 were dedicated to the hi-tech industry and to modern service industries.

The author maintains that the SEZs still have the potential to introduce significant legal reforms; although with China having entered the WTO, the significance of SEZs as an economically liberal testing field has faded.

Yang Feng summarizes that the decentralized legislative system has achieved remarkable progress, such as a clearer demarcation of the legislative power of different organs, the advancement of legislative democracy in the form of public participation in legislative processes and the adoption of a pragmatic legislative approach. According to the author, the limitations that have materialized in the reform era consist of inactive

mechanisms for supervising legislation, an insufficient guarantee of local legislative power, inefficient legislative hearings and imbalanced legislation between local and national lawmakers. In order to overcome these flaws, he provides some pragmatic recommendations for the future development of the legal system: better institutionalization of the mechanisms for supervising legislation, giving city-level governments greater authority to exercise legislative powers and strengthening the legislative hearing system.

### **VIII. Conclusion**

Reading this respectable publication, one gains more structured insight into the characteristics of China's legislative organs. This book shows in a systematic and conceptually clear manner how the decentralization reforms have shaped the development of China's legislative system. It represents a valuable resource for scholars, researchers and practitioners alike who are eager to broaden their knowledge on the theoretical framework of Chinese law-making.