"Anticipating the Third Republic of China"

Qianfan Zhang & Maximilian Steinbeis

01.02.2018 doi: 10.17176/20180201-100045

Professor Zhang, you have come to the Wissenschaftskolleg to study the German model of federalism, as you did before with the U.S. variety of decentralized government. China has more than two thousand years of experience in governing a gigantic territory with hundreds of millions of inhabitants from one unitary center of power. Why is it that after such a long time the federalist model has suddenly become interesting for China?

I can only say that some Chinese intellectuals have been seriously preoccupied with federalism, while the government has never accepted the idea. But sometime in the future, China will adopt a federal constitution and implement federalism since the current system cannot work. This is why the German federal experience is so important to China.

China's governance was never without problems, but these have been accentuated in recent ages because of the social and economic upheavals of our time. The first emperor Qin Shi Huang, who unified China after the long cruel period of the warring states around 220 BC, established a very simple unitary model of government which is basically still in place. China was already a huge country back then, although much less populated. It was a highly centralized model, but it didn't function very efficiently due to physical limitations. "The Heaven is high and the Emperor far away," as we used to say, meaning that the locals had a fair amount of latitude. As long as things went well the local officials were left alone; if not and things got so out of hand that the central government became aware, then they would be punished. As a result we used to have a good deal of local diversity, but only because the central government was unable to control all the little bits and pieces at the local level.

So there was never any formalized structure of decision-making outside the center?

The barriers of transportation and communication left room for some diversity and pluralism, but this was never institutionalized. And it still isn't today because our institutional structure basically hasn't changed much over all these centuries. We still have a central government with unlimited legislative power. They come up with a command that will be uniformly implemented across the country whether it fits or not. In China we call that: "one knife cuts all" (*yidaoqie*) – whether you are tall or short, we will just give you the same size. One example: China has serious pollution problems, so the government has decided to stop using coal for heating in the winter. They stopped coal supplies and ordered gas use instead. Now in many places no provisions have been made for winter. Central government doesn't really know which localities are prepared and which aren't. The local authorities would have known, but all they can do is follow orders from the center in this unitary system.

This isn't even about diversity and local self-determination. Not freezing to death in winter is a universal need. Why wouldn't the central government allow local authorities the discretion to provide for that need?

The problem is not a general lack of *de facto* discretion. There is plenty of that and in fact that's precisely the problem. Local officials commit plenty of violations of law and human rights. Corruption is obviously a very common and mostly local problem, and the central government often has neither the information nor the manpower nor the resolve to eradicate it. In principle the central government makes all the major policy decisions for the local authorities to implement. But if that policy goes against their personal interest then they have many ways to circumvent it. Even if the national policy will benefit people, it won't be implemented as long as there is no pressure from below. For example the government occasionally provides for catastrophe relief, every official down the line will "pluck a feather from the bird," so

there isn't much left for needy receivers when it finally reaches its destination.

Is there no possibility for pressure from below? Don't people file complaints?

Yes, but there are so many violations that the central government just doesn't know where to begin. Ever since ancient times we have had a petitioning system. If you have some grievance, if some local official does something to you, you turn to his superior. But that is the guy who appointed the inferior official you are complaining about, so he is very reluctant to solve your problem because that would suggest he made a mistake himself and appointed the wrong person. So you turn to the superior's superior, but the same logic applies, and so forth all the way up the power hierarchy until you wind up in Beijing. The central government is very nervous because all those petitioners flock into the capital. It's a huge 'siphon' effect! People line up for miles outside the Central Disciplinary Committee and with virtually no chance of getting their problem solved. Along the way they will suffer all sorts of hardships and mistreatment, sometimes in a much more horrible way than the original grievance they complained about. In the end it is all in vain. They waste their money, time, energy. I have seen people who have petitioned for twenty and even thirty years and it basically consumed their lives. Still, a lot of people keep doing it. This is sort of our culture. Under such a system, what else can they do?

What about the judiciary? Here in legalistic Germany we put a lot of faith in our judges to hold the authorities accountable.

It's the same central/local problem. We have one Supreme Court for the whole country. It cannot really oversee all the decisions made by local courts. And the local judges depend on the local authorities. The socialist constitution says that the courts are supposed to be under "democratic control," so the local People's Congress oversees the local judiciary. In reality, of course, it's the party that's in charge of everything – the People's Congress is just a "rubber stamp." The local governments determine the judicial leadership and provide money and resources for the courts. If a court decides a case against the government, there are numerous ways for the local government to come after it. The result is a lack of judicial independence, rampant local protectionism and judicial complicity in corruption. This is actually one area where more centralization is needed. People go through so much hardship to petition Beijing, partly because they can't count on the court to protect their rights.

To centralize or decentralize decisions requires categories to distinguish which policies are decided on one level and which on another – categories as provided by constitutional law. But I wonder how much difference a constitution, federalist or not, would make as long as there is one party in place that monopolizes all the power and is organized in a strictly hierarchical top-down way.

You are right. Law is very much secondary in China, particularly constitutional law. You have to resolve the political problem before the legal and constitutional problem can be resolved. All of these problems can be traced back to a lack of democratic political reform. If people elected their local officials then they would make sure that they are accountable. We do have elections every five years, but they are meaningless because of manipulation. It's not the vote that decides the fate of the officials, it is their superior. So, where the people cannot vote meaningfully, an official is not made responsible to them but only to his superior. Under such a system you don't really have a "central-local" relationship; all you have is a superior-inferior relationship that exists solely on the personal plane. This has to change before the central-local relationship can have any meaning.

So the Chinese Communist Party would have to admit competing parties?

Well, yes. If we don't have an overtly competitive party system, at least there has to be some genuine competition within the ruling party itself. In this regard we can learn from Japan and other Asian countries. Asia has perhaps the longest authoritarian tradition in the world. Even some nominally democratic countries are not really very democratic. So we are closer to their situation and might learn from their experience. In the 1980s, at the height of China's progressive reforms, there was discussion about separating the party and the state. In 1982-83, when the

first election was held after the current constitution was enacted, there were genuine electoral campaigns. People today still talk about the lively competitions on the Peking University campus when the opposing candidates debated on the same platform, one later becoming the current Premier (Li Keqiang) and others overseas "democracy fighters" (such as Hu Ping and Wang Juntao). But after that the party leaders seemed to become cautious and they tightened their control. After 1989 we experienced a huge rollback to the point that elections became completely meaningless.

Is your research perceived by the party officials as a challenge or as being helpful? Might your critique of your country's system get you in trouble?

I became very sensitized to this possibility after I published a constitutional manifesto in late 2011 to commemorate the centennial anniversary of the first Chinese republican revolution. As a public intellectual I used to write many commentaries every year. It has become almost impossible to get these published in magazines and newspapers in China. The past four decades witnessed an enormous expansion of free speech in China, particularly since development of the Internet, but only de facto and not as a constitutionally protected right. The government can always restrict speech if it wants to, including Internet speech; so far there has been nothing to stop that. For example they can simply order the Internet services to cancel your accounts, which is what they did with my blogs and microblogs (equivalent to Twitter in China) in 2013 during the Third Plenum of the 18th Party Congress. They can, of course, also blacklist you from formal publication since virtually all the publishers, magazines and newspapers are publicly owned in China. There was a rumor that I and several liberal authors were once blacklisted. I asked various publishers and got conflicting answers. Anyway, many publishers are scared and declined to publish my books, which are totally academic and not politically sensitive. Things get much easier if you publish in English since they don't have control over foreign publishers. Nor do they care since they are mainly concerned about the impact on Chinese readers. The regime restricts speech, but that doesn't necessarily mean they personally dislike or even disagree with what I say. There are plenty of people within the system who have intense interest in my research. Take the Hong Kong issue for instance. This is an example of the so-called unitary system of such a giant country not being so unitary after all. Ever since it was returned to China by the British government twenty years ago, Hong Kong has enjoyed a high degree of autonomy based on the schema of "one country, two systems" as elaboratedin the Basic Law. Only in recent years has the central government tried to extend its control over Hong Kong. The effect has been paradoxical. Ten years ago the Hongkongese just wanted autonomy; but now, as a reaction to their lack of autonomy and deprivation of rights in electing their own government, they are even calling for independence. You want more control, but what you get is less. So I propose the reverse – control less and grant more autonomy and you will actually gain more control. In fact what matters is that China keep its sovereignty over Hong Kong, but this doesn't mean that the central government should make it their business to run the city. That should be the concern of the residents of Hong Kong, who would all be grateful to the central government for its liberal approach. Officials with decent minds highly praise the ideas which I'm advocating, but no journal in mainland China would dare to publish them now.

To what extent are federal states like Germany and the U.S., which were historically formed by independent states that decided to enter upon a union at one point, comparable to centralized states which face problems of devolution and regional secessionism?

There are many different kinds of federal states, and centralized ones like the UK or France differ even more. But these differences are minor from our perspective. Devolution in a unitary system differs from federalism in that it is provided not by the constitution but by national legislation, which the parliament in principle may revoke at any time. But our problem is much more fundamental. If we don't have democracy, devolution is not necessarily a good thing; it could mean a huge risk of local abuses of power. Since the local government is not responsible to the

local people, if the central government relaxes its control then things could simply spin out of control. Limited devolution resulted in a huge catastrophe, namely the Great Famine in the late 1950s and early 1960s as caused by the Great Leap Forward. It is officially called the "three years of natural disaster," but it was in fact an institutionally caused disaster. This was the time when China practiced a rigorous planned economy and the central government was prescribing a conscription of crops from the household yield. During that time local governments were given not less but more control over the economy, whereas the political system was of course rigorously vertical, the inferior officials dependent on their superiors for promotion, so they were anxious to do whatever was necessary to please the central government. The crop yield in 1959 was not as good as in 1958, but the local governments reported such optimistic figures to their superiors that the central government then fixed unrealistically ambitious quotas. And the local government was enthusiastic in rigorously executing the central command; they even tried to exceed the prescribed conscription at the expense of peasants who were forced to hand their harvest over to the government without keeping enough for their own sustenance. As a result, tens of millions died of starvation. That would never have happened in a democratic system. Amartya Sen says that India, a very poor country, never suffered a famine of such magnitude because it is a democracy.

When you walk the streets of Berlin, the political center of Germany, does what you see meet your expectations? Much as I love Berlin, I have to admit that many Germans, particularly those from older and prouder and richer cities like Munich, Cologne, Frankfurt or Hamburg, have a rather low opinion of our broke and dysfunctional federal capital.

That is fairly typical for a federal state, isn't it? The fact that Berlin is not so rich and privileged indicates that democracy and federalism do work in this country. When you go to Beijing it's totally different. At this moment they are trying to kick out all those poor people who came to Beijing, the so-called "outsiders" or "northern drifts." That is another way in which China, on closer examination, is not "unitary" or "socialist" at all. We have all these man-made barriers against outsiders. There are so many institutional fences everywhere. And I mean literally. When you want to enter Humboldt-Universität you can just walk right in, but Peking University is surrounded by a huge fence and you have to show your ID to get through. We try to make our capital the best, we've created all sorts of privileges which naturally attract people from all over the country, but it's extremely difficult to get a Beijing household registration (*hukou*). In fact a quite famous German visitor rightly called the *hukou* a "passport" (*huzhao*), as if you need special permission to enter a foreign country and share its many privileges. Just one example – it is much easier for students with a Beijing *hukou* to enter the prestigious universities because the majority of these are in Beijing and they issue quotas to every province, so Beijing residents naturally get a much higher quota. We even have different examinations for Beijing and half of the provinces, and the admission standards are highly protective of local residents. This is actually part of the "stability maintenance" (*weiwen*) system: We want the Beijing residents to be reasonably happy and not to protest. They (including my own family) are getting what you might call a free pass by dint of this unfair and highly centralized system. But as I said at the beginning, this system is bound to change. China has experienced the First Republic (1912) and Second Republic (1949) Republic, albeit both pseudo in nature, and at some point the Third Republic will arrive and it will be a genuine federal democracy like Germany.

This interview was conducted for Wissenschaftskolleg's "Köpfe und Ideen 2018" and is reposted here with kind permission. Questions: Maximilian Steinbeis.

ABOUT THE AUTHORS

Qianfan Zhang
Qianfan Zhang is a Professor of Constitutional Law at the University of Beijing and a Fellow 2017/18 at the Wissenschaftskolleg Institute of Advanced Studies at Berlin.
Maximilian Steinbeis
Maximilian Steinbeis is a legal journalist and writer and the founder and director of Verfassungsblog.



SUGGESTED CITATION

Zhang, Qianfan; Steinbeis, Maximilian: "Anticipating the Third Republic of China", Verfassungsblog, 01.02.2018, doi: 10.17176/20180201-100045.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20180201-100045.