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# Unused powers: contestation over autonomy legislation in the PRC

Yash Ghai and Sophia Woodman<sup>1</sup>

## Introduction

There is a paradox at the heart of current arrangements for autonomy for ethnic minorities in the PRC. The most important and distinctive power granted to autonomous areas in China's system of Nationalities Regional Autonomy (NRA, *minzu quyu zizhi*) allows them to modify higher-level laws and policies.<sup>2</sup> But this power is hardly used, and has remained uncodified until recently, existing in law only in very rudimentary form. Efforts by the five autonomous regions (ARs) to exercise these powers have been repeatedly blocked, a sign of contestation over what the law on autonomy can and should mean.

While autonomous areas should theoretically have the most extensive level of self-government of any localities in the PRC, our research shows that *no significant autonomy legislation has actually been passed* at the level of ARs<sup>3</sup>; autonomy legislation has mainly been enacted at prefectural or county levels to implement higher-level laws and policies.

Under the current PRC legal framework, the "modification power" (*biantong quan*)<sup>4</sup> is one of two principal methods for the exercise of autonomy. The other is the allocation of key government posts in autonomous areas to minority members. Modification should give the "organs of autonomy" in the area the power to alter state laws and policies to suit "the political, economic, and cultural characteristics" of the particular minority.<sup>5</sup> It is thus essential to understanding the nature of autonomy as conceived of within

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<sup>1</sup> The University of Hong Kong's Distinguished Researcher Award, given to Yash Ghai, supported the research and writing of this article.

<sup>2</sup> Yang Xu, "Minzu zizhi difang lifa xuanti ji biantong wenti chutan" [A Preliminary Discussion on the Choice of Subjects for Legislation in Autonomous Areas and the Problem of Modification], *Manzu yanjiu*, no. 3, 2002, p. 5.

<sup>3</sup> Autonomous areas in the PRC are established at three administrative levels: autonomous regions (analogous to provinces), autonomous prefectures and autonomous counties.

<sup>4</sup> Cai Dingjian, *Xianfa jingjie* [The Essence of the Constitution] (Beijing: Falü chubanshe, 2004), pp. 391-2.

<sup>5</sup> Constitution of the People's Republic of China, 1982, Art. 112 and Art. 116.

the Chinese system, and critical to answering the question of whether the minority areas *could* exercise “genuine autonomy.”<sup>6</sup>

Western academic studies measuring the practice of NRA against an ideal type of autonomy have generally found it deficient in a number of key respects,<sup>7</sup> although opinion differs on whether this is an inevitable result of the existing framework,<sup>8</sup> or due to the failure to implement laws that provide for significant autonomy.<sup>9</sup> In the literature on minorities in China, the legal framework for autonomy has received relatively little attention,<sup>10</sup> as it is generally assumed to be of negligible importance since politics and policy—and hence the Party—dominate in minority areas.<sup>11</sup>

But from the beginning of the reform era in the late 1970s, law has been a field of debate within the PRC over what autonomy means, with a significant focus being the scope of the legislative powers of autonomous areas. To date, however, no comprehensive account of the existing framework for these powers has been published in English.<sup>12</sup> This is part of a more general lack of attention in the literature to ways in which administrative forms have shaped ethnic claims and identities in the PRC.<sup>13</sup> As in many other parts of the world, legal decentralization in the PRC has been half-hearted, to say the least. In fact, key elements of autonomy systems, such as identifying which matters are within the sphere of autonomy and which are reserved for the

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<sup>6</sup> Since his 1988 Strasbourg speech, the Dalai Lama has repeatedly stated that he is not seeking independence for Tibet, but would be satisfied with “genuine autonomy” within the PRC. See Baogang He and Barry Sautman, “The Politics of the Dalai Lama’s New Initiative for Autonomy,” *Pacific Affairs*, vol. 78, no. 4 (2005), pp. 601-29.

<sup>7</sup> See for example Barry Sautman, “Legal Reform and Minority Rights in China,” in Stuart S. Nagel, ed., *Handbook of Global Legal Policy* (New York: Marcel Dekker, 2000), p. 73; Matthew Moneyhon, “Controlling Xinjiang: Autonomy on China’s New Frontier,” *Asian-Pacific Law and Policy Journal*, vol. 3, no. 4 (February 2002), pp. 10-11.

<sup>8</sup> Yash P. Ghai, “Autonomy Regimes in China: Coping with Ethnic and Economic Diversity,” in Ghai, ed., *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States* (Cambridge, New York: Cambridge University Press, 2000).

<sup>9</sup> Colin P. Mackerras, *China’s Minorities: Integration and Modernization in the Twentieth Century* (Oxford: Oxford University Press, 1994), pp. 153-166, pp. 264-5.

<sup>10</sup> A few notable exceptions are Katherine P. Kaup, *Creating the Zhuang: Ethnic Politics in China* (Boulder, CO: Lynne Rienner, 2000), pp. 116-120; Chien-min Chao, “The Procedure for Local Legislation in Mainland China and Legislation in National Autonomous Areas,” *Issues and Studies*, vol. 30, no. 9 (September 1994), pp. 95-116; Binh G. Phan, “How Autonomous are the National Autonomous Areas of the PRC? An Analysis of Documents and Cases,” *Issues and Studies*, vol. 32, no. 7, (July 1996), pp. 83-108; Barry Sautman, “Ethnic Law and Minority Rights in China: Progress and Constraints,” *Law and Policy*, vol. 21, no. 3 (July 1999), pp. 283-314; and Theodore C. Sorensen and David L. Philips, *Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case* (Belfer Center for Science and International Affairs, John F. Kennedy School of Government, Harvard University, 2004).

<sup>11</sup> See Colin Mackerras, *China’s Ethnic Minorities and Globalisation* (London and New York: Routledge Curzon, 2003), p. 26; Stevan Harrell, *Ways of Being Ethnic in Southwest China* (Seattle and London: University of Washington Press, 2001), p. 48.

<sup>12</sup> The legal framework is briefly outlined in Shi Wenzheng and Bu Xiaolin, “Legislation in National Autonomous Areas in the People’s Republic of China,” in Jan Michiel Otto et al., eds., *Law-Making in the People’s Republic of China* (The Hague: Kluwer Law International, 2000).

<sup>13</sup> Katherine Palmer Kaup, “Regionalism versus Ethnic nationalism in the PRC,” *The China Quarterly* 172 (2002), pp. 863-884.

central authorities, are absent. But in China as elsewhere, giving autonomy legal expression, however vague, has made the law a field for contention over the meaning of autonomy.

This article is based largely on Chinese-language documentary sources, including scholarly articles and books on autonomy law; official sources such as government white papers, the *NPC Gazette* and the NPC website; and a comprehensive search of relevant regulatory instruments.<sup>14</sup> First, it outlines how the legislative powers of autonomous areas and the power to modify have been delineated in the reform era. It then describes autonomous legislative powers and compares them with the legislative powers of ordinary localities. Finally, it looks at how autonomous areas actually use autonomous legislative powers, and analyzes some of the fault lines in the contention over the meaning of autonomy.

### **The power to enact autonomy law**

*Enacting autonomy regulations and singular regulations is the most important autonomy power of autonomous areas since it serves to regulate and protect the exercise of their other autonomy powers.*<sup>15</sup>

Early in the reform period, then paramount leader Deng Xiaoping committed the PRC to “truly implementing” NRA, with the manifestations of this being, first, the extent to which members of minority groups hold leadership positions in autonomous areas and, second, “strengthening the construction of a legal framework for the NRA system, relying on law to carry out the protection of the right of minority nationalities to autonomy.”<sup>16</sup>

At the 15th Chinese Communist Party (CCP) Congress in 1997, NRA was mentioned as one aspect of the Party’s commitment to ruling according to law.<sup>17</sup> According to the NPC Minority Affairs Committee (MAC), autonomy legislation “is an important expression of implementing the right to autonomy according to law, and a requirement of upholding and perfecting the system of nationalities regional autonomy.”<sup>18</sup> Descriptions of the legislative powers of autonomous areas feature prominently in Beijing’s efforts to defend

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<sup>14</sup> This search was conducted on <[www.chinalawinfo.com](http://www.chinalawinfo.com)>, a website run by Beijing University which maintains the most comprehensive collection of Chinese laws and regulations.

<sup>15</sup> Ao Junde, “Minzu quyue zizhifa zhong liangzhong biantongquan zhijian de lianxi he qubie” [The Connection and Difference Between the Two Types of Modification Power in the Law on Nationalities Regional Autonomy (LNRA)], *Zhongyang minzu daxue xuebao* (*zhexue shehui kexue ban*), vol. 32, no. 1 (2005), p. 21.

<sup>16</sup> State Ethnic Affairs Commission (SEAC), *Zhongguo gongchandang guanyu minzu wenti de jiben guandian he zhengce* [*ganbu duben*] [The Chinese Communist Party’s Basic Standpoints and Policies on the Nationalities Question (Readings for Cadres)] (Beijing: Minzu chubanshe, 2002), p. 160.

<sup>17</sup> SEAC, *Zhongguo gongchandang guanyu minzu wenti*, p. 163.

<sup>18</sup> NPC Minority Affairs Committee (MAC), “Quanguo renda minzu weiyuanhui guanyu dijiujie quanguo renda disanci huiyi zhuxituan jiaofu shenyi de daibiao tichu de yi’an shenyi jieguo de baogao” [Report from the NPC MAC on the Results of Review of Delegate Motions Passed on by the Presidium

itself from its international critics. For example, the 2005 White Paper on Regional Autonomy for Ethnic Minorities in China gives figures for the number of pieces of legislation passed in autonomous areas (but without specifying the administrative level of enactment).<sup>19</sup>

As part of the revival of socialist legality in the Deng era—autonomy had been abolished in all but name during the Cultural Revolution—the 1982 Constitution contained more extensive provisions on NRA. During its drafting, the idea that China should adopt a federal system was raised, as it had been when the PRC's first constitution was drafted in 1954, but again this was rejected. It was, however, agreed that autonomy should be "extensive."<sup>20</sup> In a departure from the 1954 scheme, in which only autonomous areas were accorded legislative powers, the 1982 Constitution gave local governments at provincial level the power to enact local legislation. The promulgation of the 1984 Law on Nationalities Regional Autonomy<sup>21</sup> implemented the constitutional provisions on autonomy and expanded on them in some key areas. This law was revised in 2001, but the changes were relatively minor, and generally failed to respond to concerns about the lack of clarity on the nature of autonomous legislative powers.<sup>22</sup>

Under the 1982 Constitution, then, autonomous areas have two sets of powers. The first set is the powers accorded to local governments in the PRC.<sup>23</sup> The second is specifically granted to autonomous areas only: to enact a local charter and to use autonomy legislation to modify state laws and policies.<sup>24</sup> The organs of self-government of autonomous areas may exercise the latter powers, "within the limits of their authority as prescribed by the Constitution, the Law of the People's Republic of China on Nationalities Regional Autonomy and other laws" in order to "implement state laws and policies in the light of the existing local situation."<sup>25</sup> The legislative powers of autonomous areas are outlined in Art. 116:

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of the Third Session of the Ninth NPC for Review], 28 December 2000, *Quanguo renmin daibiao dahui changwu weiyuanhui gongbao*, no. 1 (2001), p. 69. Like the other six NPC special committees, the MAC's role is to "examine, discuss and draw up relevant bills and draft resolutions," (Constitution, Art. 70[2]) but it has additional powers to "conduct investigations and make proposals on how to strengthen unity among the nationalities; [to] deliberate on the regulations on autonomy and singular regulations submitted by the autonomous regions to the NPCSC for approval and... report its deliberations to the NPCSC" (1982 Organic Law on the NPC, Art. 37[5ii]).

<sup>19</sup> State Council Information Office, "Regional Autonomy for Ethnic Minorities in China," February 2005, Section III.2. Available at: <<http://www.china.org.cn/e-white/20050301/index.htm>>.

<sup>20</sup> Cai, *Xianfa jingjie*, p. 74.

<sup>21</sup> Henceforth LNRA.

<sup>22</sup> For an example of proposals to improve the law, see "Decision on amending the PRC Law on Nationalities Regional Autonomy (Draft Proposal)" in Luo Tongda et al., eds., *Wanshan minzu quyuzi zhi fa wenti yanjiu* [Research on the Issue of Perfecting the Law on Nationalities Regional Autonomy] (Chengdu: Sichuan renmin chubanshe, 1997).

<sup>23</sup> Constitution, Chapter 3, Section V.

<sup>24</sup> Constitution, Chapter 3, Section VI.

<sup>25</sup> Art. 115.

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*The people's congresses of national autonomous areas have the power to enact regulations on the exercise of autonomy and other singular regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulations on the exercise of autonomy and other singular regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.*

The main focus of this provision is on approval procedures, with minimal guidance on the scope of autonomy legislation. It was not until the passage of the 2000 Legislative Law that these parameters were further delineated:

*An autonomy regulation or singular regulation may, in accordance with the special characteristics of the local nationalities, make stipulations modifying the provisions of a law or administrative regulation, but these must not contravene the basic principles of the law or regulation, and modifications may not be made of the LNRA, or other laws or administrative regulations that make specific provision for the nationality autonomous areas.<sup>26</sup>*

In addition, the Legislative Law states: "The Constitution is the highest legal authority; no law, administrative regulation, local regulation, *autonomous regulation, singular regulation* or administrative or local rule may contravene the Constitution."<sup>27</sup> It also specifies that the provisions of autonomy regulations or singular regulations modifying a higher-level law or regulation will prevail in the autonomous area.<sup>28</sup>

The LNRA does not provide further guidance on the scope of autonomous legislative powers. However, it clearly indicates that the power to modify should be used in accord with the developmental priorities of the state: "... The organs of self-government of national autonomous areas shall have the power to adopt special policies and flexible measures in the light of local conditions to *speed up the economic and cultural development* of these areas."<sup>29</sup>

By contrast, local people's congresses (LPCs) of provinces and municipalities directly under the central government are authorized to adopt local regulations, provided these do not contravene the Constitution, national laws, or State Council administrative regulations.<sup>30</sup> Once passed, the regulations are to be reported to the NPCSC "for the record." Similar powers have been granted under specific State Council authorization to the five special economic zones (SEZs) and to certain larger cities. Local regulations

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<sup>26</sup> Art. 66(2).

<sup>27</sup> Art. 78, emphasis added.

<sup>28</sup> Art. 81.

<sup>29</sup> Art. 6(2), emphasis added.

<sup>30</sup> Art. 100.

of ordinary provinces and cities may be made “in light of the specific conditions and actual needs of their respective administrative areas”<sup>31</sup> but cannot modify national laws.

The difference between ordinary local and autonomous legislative powers is disputed. In a 1986 response to a question on what was the difference between local regulations and autonomy/singular regulations, an explanation from the NPC Legislative Affairs Commission (LAC), which was exercising a power of interpretation that is not granted to it by the Constitution, stated that while they were clearly different in form, the question of whether autonomy/singular regulations were a type of local regulations required “further research.” Writing much later, Zhou called this response “unconstitutional.”<sup>32</sup>

### **Forms and procedures**

Distinct forms are provided for autonomy legislation. The people’s congresses of autonomous regions, prefectures and counties have four types of instrument which they may use in the exercise of their autonomy powers: autonomy regulations, singular regulations, modifying rules and supplementing rules.

An autonomy regulation (*zizhi tiaoli*) is defined by Cai as “a regulation passed by the people’s congress of a nationality autonomous area that deals with basic issues relating to the autonomy of the autonomous area and to important matters of general concern there.”<sup>33</sup> A kind of local charter or constitution, according to Ao and Wu, it is considered “a comprehensive regulation on autonomy” covering relations between nationalities in the area (but not other social relationships). To a certain extent, they assert, it may even regulate relations between the autonomous area and the higher-level state organs.<sup>34</sup>

Singular regulations (*danxing tiaoli*), on the other hand, while covering the same potential ground as autonomy regulations, only deal with one specific subject matter in any particular instrument.<sup>35</sup> However, a singular regulation can be used to modify several laws or regulations at one time, and is thus extensive in its scope, as compared to modifying rules.<sup>36</sup>

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<sup>31</sup> Article 64 of the Legislative Law provides for local legislation to cover three types of situations: to implement a law or administrative regulation; to cover matters of local concern; and to cover matters on which no national laws or regulations yet exist.

<sup>32</sup> Response from the NPC LAC to a query on the difference, cited in Zhou Wei, “Minzu quyu zizhi fa jieshi anli shizheng wenti yanjiu” [Research on the question of actual interpretation of cases under the LNRA] *Xinan minzu xueyuan xuebao, zhexue shehui hexue ban*, vol. 23, no. 7, July 2002, p. 152.

<sup>33</sup> Cai, *Xianfa jingjie*, p. 392.

<sup>34</sup> Ao Junde and Wu Zongjin, eds., *Zhongguo minzu lifa lilun yu shijian* [Theory and Practice of China Nationalities Legislation] (Beijing: Zhongguo minzhu yu fazhi chubanshe, 1998), pp. 394-5.

<sup>35</sup> Ao and Wu, *Zhongguo minzu lifa*, p. 399; Cai, *Xianfa jingjie*, p. 392.

<sup>36</sup> Ao and Wu, *Zhongguo minzu lifa*, p. 402.



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Autonomous area LPCs can also enact modifying rules (*biantong guiding*) and supplementing rules (*buchong guiding*). Any rule may apply to only one law or policy document.<sup>37</sup> They may modify higher-level laws and regulations that have explicitly delegated the modification power, including the Criminal Law, the Marriage Law, the General Principles of Civil Law, the Civil Procedure Law, the Inheritance Law, the Adoption Law, the Forests Law, the Prevention of Communicable Diseases Law, and the National Flag Law.<sup>38</sup> Twelve laws enacted between 1979 and 1997 included provisions allowing modification.<sup>39</sup>

In terms of procedure, the Constitution and the LNRA grant the power to enact autonomy regulations and singular regulations only to the LPCs, and not to their Standing Committees (LPCSCs), even though nationally and in other localities the latter is the major law-making organ.<sup>40</sup> However, in about half of the cases where laws delegate the power to modify, the LPCSC is authorized to enact modifying rules. Generally, the power to modify “basic laws” (such as the Civil Law, the Criminal Law and the Civil Procedure Law) can only be exercised by the LPC.<sup>41</sup>

Unlike general local legislation, which only needs to be reported to the NPCSC “for the record,” autonomy regulations, singular regulations and modification rules require approval by a higher-level PC. In the case of the ARs, this is the NPCSC; in the case of the autonomous prefectures and counties, this is the PCSC at provincial level.<sup>42</sup> According to an authoritative interpretation by the NPC LAC, these organs must consider if the autonomy legislation is “appropriate” (*shidang*).<sup>43</sup> The autonomous area legislation only goes into effect once it has been approved, but the law is silent on what should happen if approval is not granted.<sup>44</sup> The approval requirement reflects the principle that wherever modification is allowed (*ke biantong yuanze*), approval is necessary, Cai writes.<sup>45</sup> Another view is that the approval process is required to ensure the uniformity of the legal system.<sup>46</sup>

<sup>37</sup> Ao and Wu, *Zhongguo minzu lifa*, pp. 401-2.

<sup>38</sup> This list is from Ao and Wu, *Zhongguo minzu lifa*, p. 402.

<sup>39</sup> Zhou Wei, “Minzu zizhi difang danxing tiaoli lifaquan yanjiu” [Research on the Legislative Power of Autonomous Areas to Enact Singular Regulations], *Shehui kexue yanjiu*, no. 1 (1998), p. 75.

<sup>40</sup> A recommendation that the LNRA be amended to allow for LPCSCs in autonomous areas to enact singular regulations was not accepted. “Decision on amending the LNRA,” p. 5.

<sup>41</sup> Zhou, “Minzu zizhi difang,” p. 75.

<sup>42</sup> LNRA, Art. 19. Provincial-level PCSCs include those at autonomous-region level and those of municipalities directly under the State Council.

<sup>43</sup> NPC Legal Affairs Commission (LAC), “Disizhang: difangxing fagui, zizhi tiaoli, danxing tiaoli, guizhang” (Local, Autonomy and Singular Regulations and [Administrative] Rules), *Zhonghua renmin gongheguo lifafa shiyi* (Explanation of the Legislative Law of the PRC), p. 11, at <[http://www.npc.gov.cn/zgrdw/home/lm\\_index.jsp?lmid=1137&dm=113723&pdm=1137](http://www.npc.gov.cn/zgrdw/home/lm_index.jsp?lmid=1137&dm=113723&pdm=1137)>, accessed 24 April 2006.

<sup>44</sup> According to the NPC LAC, if the legislation is not approved, it is returned to the drafting organ for revision.

<sup>45</sup> Cai, *Xianfa jingjie*, pp. 392-3. The 1980 Marriage Law stated that modification rules enacted at AR level need only to be reported to the NPCSC “for the record.” Following 2001 amendments to the law, NPCSC approval for modifications is required.

<sup>46</sup> NPC LAC, *Difangxing fagui*, p. 11.

But conflicts of laws are endemic in the Chinese legal system. Inconsistencies between ordinary local laws passed by provincial people's congresses and national legislation are common.<sup>47</sup> Many localities enact implementing regulations that effectively modify national laws and regulations. In practice the NPCSC "adopts a policy of passive review" of local legislation; "no review unless there is a complaint."<sup>48</sup> The NPCSC has never exercised its power to repeal local legislation. Even in the case of autonomy legislation, the problem is not that the NPCSC has refused to approve it,<sup>49</sup> but that it has been blocked before that stage.

Some scholars assert that since it requires NPCSC approval, autonomy legislation from ARs should have the same status as State Council enactments submitted to the NPCSC for approval and passed by the NPCSC. It thus *should* bind national institutions in a way that local legislation does not. "[Autonomy regulations] have the character of local legislation, but they also have the character of national legislation," claims Qin.<sup>50</sup> As such legislation is approved by the NPCSC, Zhou writes, "its legal effect is the same as that of laws enacted by the NPCSC."<sup>51</sup>

### **The nature of the modification power**

While some legal scholars present it as the key element of autonomy powers under the NRA system, the modification power has a relatively flimsy legal basis. Ao and Wu assert that the authority of autonomous areas to modify is based on provisions of the Constitution and the LNRA,<sup>52</sup> but neither instrument actually uses the term in relation to legislation. Chinese scholars believe that modification is an inherent aspect of the power to enact autonomy legislation.<sup>53</sup> The only explicit reference to modification in the

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<sup>47</sup> Zou Keyuan, "Harmonizing Local Laws with the Central Legislation," *China Perspectives*, no. 52 (March-April 2004), p. 49.

<sup>48</sup> Zou, "Harmonizing Local Laws," pp. 51-2. A committee set up by the NPCSC in 2004 to review local and administrative regulations for compliance with the Constitution and the laws does not appear to have made any fundamental change to this system.

<sup>49</sup> Mackerras seems to assume that the NPCSC has passed autonomy legislation: "[M]y explorations among minority officials and leaders suggest that it is actually very unusual for that [veto] to happen. Much more likely is that the autonomous places negotiate beforehand with the central authorities and make sure that the law is acceptable to the higher level before it is passed at the lower." *China's Ethnic Minorities and Globalisation*, p. 39.

<sup>50</sup> Qin Naichang, "Lun zhiding zizhi tiaoli de kunnan ji tuijin minzu lifa de xin silu—yi guangxi zhuangzu zizhi qu wei li" [Discussion of the difficulties in enacting autonomy regulations and new thoughts on promoting minority legislation—examples from the Guangxi Zhuang Autonomous Region], *Guangxi minzu xueyuan xuebao (zhexue shehui kexue ban)*, no. 3 (1995), p. 6.

<sup>51</sup> Zhou, "Minzu zizhi difang," p. 154.

<sup>52</sup> Relevant provisions are Constitution Art. 115 and LNRA Art. 6(2). Ao and Wu, *Zhongguo minzu lifa*, pp. 408-9.

<sup>53</sup> In relation to the Constitution: Cai, *Xianfa jingjie*, pp. 391-2. In relation to the LNRA, Ao, "Minzu quyue zizhifa," pp. 19-21. Ao writes that Art. 19 of the LNRA (which replicates Constitution Art. 116) "does not clearly indicate modification, but modification is the intended meaning of the stipulation," p. 19.

LRNA is the provision for autonomous areas to modify higher-level “resolutions, decisions, orders or instructions” if these do not “suit the conditions” of the area.<sup>54</sup> Prior to the enactment of the Legislative Law in 2000, which incorporated the term “modifying stipulation” (*biantong guiding*),<sup>55</sup> the only source authorizing modification of laws was the provisions of national laws that delegate such power to autonomous areas.

Some authoritative sources conceive of this power narrowly. The NPC LAC has stated that if a national law does not contain a provision allowing for modifying rules, enactment of such rules is not permitted.<sup>56</sup> However, a number of localities have passed implementing rules making alterations to other laws, including of the Election Law, which provides for such rules, and the Criminal Procedure Law, which does not.<sup>57</sup> The Legislative Law does not limit modification to cases of delegated powers. A view that fits better with the idea of “extensive” autonomy is that advanced by Yang: modification is allowed except when it has been expressly prohibited.<sup>58</sup>

Scholars have sought to articulate the scope of modification. Modification of laws and regulations may partially limit the application of the relevant instrument, or make additions to it.<sup>59</sup> In the case of policy, modification may go so far as to halt its application entirely.<sup>60</sup> Any modification must comply with the “spirit” (*jingshen*) of the national laws and policies<sup>61</sup> and cannot contravene the “general principles” (*jiben yuanze*) of national law.<sup>62</sup> However, there is no authoritative interpretation on the meaning of these terms. Ao and Wu propose the following points to describe the extent of modification that has “emerged from law and practice”:

1. Provisions of the Constitution and the LNRA may not be modified.
2. Where laws already make provision for minority issues, no further modification is allowed.
3. Where modification is authorized by particular laws, this should not go against their “basic principles and spirit.”
4. “There is no need for flexibility, and there should not be any, regarding all laws and administrative regulations that are already in accord with the ‘particular political, economic and cultural characteristics of the minority in that area’ and where there is already no impediment to their implementation in that area.”<sup>63</sup>

<sup>54</sup> Art. 20. Approval from the issuing organ of the modified policy is required.

<sup>55</sup> Art. 66(2).

<sup>56</sup> Zhou, “Minzu quyü zizhifa,” p. 153.

<sup>57</sup> Qin, “Lun zhiding zizhi tiaoli,” pp. 9-10.

<sup>58</sup> Yang, “Minzu zizhi,” p. 6.

<sup>59</sup> Ao and Wu, *Zhongguo minzu lifa*, pp. 401-2.

<sup>60</sup> This is because no limits have been set to this power in law. Ao, “Minzu quyü zizhifa,” p. 20.

<sup>61</sup> Cai, *Xianfa jingjie*, p. 391-2.

<sup>62</sup> Lin, *Constitutional Law*, p. 154. NPC LAC, *Difangxing fagui*, p. 12, states that the “general principles” and the “spirit” are essentially the same thing.

<sup>63</sup> Ao and Wu, *Zhongguo minzu lifa*, pp. 410-11.

Apart from the last point, these principles were incorporated into the Legislative Law in 2000, indicating that in some cases legal academics and minority activists have been successful in advancing their vision of autonomy. But the NPC LAC's interpretation of that law states that modification may be used when the provisions of a law are "not entirely appropriate to the actual circumstances" of an autonomous area. National law, it says, is addressed to the whole nation, and it is difficult for it to "take care of" (*zhaogu dao*) the particular circumstances of autonomous areas, except where provisions are specifically made for them, and in that case, the appropriate issues have already been addressed by the legislative organ.<sup>64</sup>

### **The exercise of autonomy law-making powers in ARs**

While the legal framework outlined above is fairly comprehensive, the fact that key concepts remain in dispute limits its application. It is hardly surprising, then, to find that autonomous areas have made little use of their autonomy powers to enact legislation. As one observer notes:

*A weak link in our country's legislative system is the fact that, as compared with legislative organs in other areas, legislative organs in nationality autonomous areas have not been very dynamic in their legislative activities. This is especially pronounced in the people's congresses of some autonomous counties which in some cases have only enacted a single autonomy regulation in the course of many years.*<sup>65</sup>

None of the five ARs has enacted an autonomy regulation or a singular regulation.<sup>66</sup> (When overall figures are given for autonomy legislation, the administrative level of enactment is usually unspecified.) In fact, the only autonomy legislation passed by ARs has been a small number of modifying rules under delegated powers relating to laws that did not require NPCSC approval.<sup>67</sup> Thus in the reform era, *the ARs have not exercised their powers to make autonomy laws in any significant way.* According to Qin, a minority scholar from Guangxi, this state of affairs "is not beneficial to the exercise of autonomy powers by the autonomous areas, and affects the development of the economy and culture of nationality autonomous areas."<sup>68</sup>

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<sup>64</sup> NPC LAC, *Difangxing fagui*, p. 11-12.

<sup>65</sup> Zhang Xiaohui, *Zhongguo falü zai shaoshu minzu diqu de shishi* [Implementation of Chinese Law in Ethnic Minority Areas] (Yunnan daxue chubanshe, 1994), quoted in Zhou, "Minzu zizhi difang," p. 76.

<sup>66</sup> NPC LAC, *Difangxing fagui*, p. 1, states that as of 1998, none had enacted an autonomy regulation. None have been passed since then. NPC MAC, "baogao," 28 December 2000, p. 69, confirms that as of that date, no AR had passed any singular regulation.

<sup>67</sup> Mostly on the Marriage Law (generally providing for lower age of marriage), with some on the Adoption Law.

<sup>68</sup> Qin, "Lun zhiding zizhi tiaoli," p. 2.

Qin's account of the effort to pass autonomy regulations in Guangxi provides unique insight into this process. Drafting of these regulations started soon after the founding of the Guangxi Zhuang Autonomous Region (GZAR) in 1958, and by 1995, the document had gone through 19 drafts. There had been initial drafts in the 1950s, but the work began in earnest after the 1984 passage of the LNRA. Following extensive consultations within the GZAR, in March 1987 the 13<sup>th</sup> draft was submitted to the CCP Central Committee. The CCP Secretariat sent on the draft to the NPC MAC<sup>69</sup> and the State Council. Two opinions emerged: first, the draft did not sufficiently reflect the particular character of Guangxi; and second, "there was a rather large distance between the opinions of the relevant State Council ministries and commissions and the requirements of Guangxi, reflecting the fact that their perceptions of the spirit of the LNRA were not in accord." Finally, under the guidance of the NPC MAC, the 18<sup>th</sup> draft was completed by March 1989, and after further revisions by the MAC, was submitted to the State Council for consultation.<sup>70</sup>

In 1991 the State Council Legal Affairs Bureau solicited opinions on the draft GZAR Autonomy Regulations from its ministries and commissions. "Very few" had no fundamental objections. Qin summarizes their reactions as follows. Some more or less completely rejected aspects of the draft that allowed the GZAR to carry out special policies, stressing that policies must "accord with unified national regulations." Some objected that provisions of the draft were not in accord with their departmental regulations,<sup>71</sup> thus implying that the autonomy regulations should have lower status than such regulations. Almost all responses referred to the draft regulations as "local regulations."<sup>72</sup>

The other four ARs were apparently waiting to see the outcome of the Guangxi efforts to pass an autonomy regulation before trying to get the centre to approve theirs.<sup>73</sup> In Inner Mongolia, the dominance of Han Chinese in the regional PC thwarted the efforts of two successive Mongol chairmen of the body to pass autonomy regulations in the 1980s, writes Bulag.<sup>74</sup> Drafting of the autonomy regulations for the Tibet Autonomous Region (TAR) began in 1980 under the leadership of the TAR Party Committee, according to Ao and Wu. The draft underwent several rounds of discussion by its Standing Committee and the TAR PCSC, and also "won the support" of the NPC MAC

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<sup>69</sup> See note 18.

<sup>70</sup> Qin, "Lun zhiding zizhi tiaoli," pp. 2-3. Kaup, *Creating the Zhuang*, pp. 117-18, also gives a brief account of the effort to pass the regulations.

<sup>71</sup> Guizhang, for example, normative documents that do not have the status of law.

<sup>72</sup> Qin, "Lun zhiding zizhi tiaoli," pp. 7-8.

<sup>73</sup> Personal communication.

<sup>74</sup> Uradyn E. Bulag, "Inner Mongolia: The Dialectics of Colonization and Ethnicity Building," in Morris Rossabi, ed., *Governing China's Multiethnic Frontiers* (Seattle and London: University of Washington Press, 2004), pp. 94-5.

and “relevant central organs.” There were a number of exercises soliciting opinions on the draft at consultation meetings and the document went through 15 drafts altogether, but apparently was never submitted to the State Council.<sup>75</sup> Its contents included:

1. A preamble emphasizing national unity and asserting that the TAR was an indivisible part of China.
2. Provisions that mainly Tibetans should constitute the personnel of autonomous organs, but with appropriate representation of other minorities, and emphasizing the interdependence of the minorities and the Han.
3. Provisions on self-government including:
  - exercise of self-government in setting development plans;
  - a list of the special policies and flexible arrangements granted by the centre to the AR;
  - reflection of contemporary changes, for example the socialist market economy; and
  - a chapter on religion reflecting its importance for Tibet.<sup>76</sup>

Although it does not have a constitutional role in the exercise of autonomous legislative powers, the State Council has the power “to direct and administer affairs concerning the nationalities and to safeguard the equal rights of minority nationalities and the right of autonomy of the national autonomous areas.”<sup>77</sup> In effect, writes Qin, the NPCSC has ceded its approval power to “certain functional departments at the centre, in particular the economic management ministries” because this is the way that the division of interests between local areas and the centre are generally dealt with.<sup>78</sup> Government departments at the national and provincial level are reluctant to devolve powers that directly affect their economic interests to autonomous areas, assert Zhu and Yu.<sup>79</sup>

Yet the State Council is not the only barrier to AR autonomy legislation. In practice the CCP dominates the process of drafting autonomy legislation, as hinted at above. According to Qin, once drafting of any autonomy regulation is completed at AR level, the local Party Committee has to submit it to the CCP Central Committee for review, and the Party centre consults various parties on the draft. Only when consensus has been reached will the

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<sup>75</sup> Ao and Wu, *Zhongguo minzu lifa*, p. 455.

<sup>76</sup> Ao and Wu, *Zhongguo minzu lifa*, pp. 455-6.

<sup>77</sup> Constitution, Art. 89(11).

<sup>78</sup> Qin, “Lun zhiding zizhi tiaoli,” p. 8.

<sup>79</sup> The absence of autonomy regulations at AR level is attributed to this in Zhu Guobin and Yu Lingyun, “Regional Minority Autonomy in the PRC: A Preliminary Appraisal from a Historical Perspective,” *International Journal on Minority and Group Rights*, vol. 7 (2000), pp. 54-5.

autonomy regulation be submitted to the AR PC for enactment.<sup>80</sup>

Apparently the revision of the LNRA in 2001 has not resulted in any change in the deadlocked situation regarding autonomy legislation in the ARs, since no such laws have been enacted since that time. Furthermore, the revision did not address some of the barriers to such legislation identified by legal scholars and minority activists. Proposals that the LNRA be retitled a “basic law” to indicate its status in the hierarchy of laws and that a sentence be added to the Preamble stating that “all laws, administrative regulations, local regulations and rules may not conflict with the Constitution and this law” were not adopted.<sup>81</sup>

Although they have not passed significant laws using their autonomy powers, the ARs *have* used their powers to enact general local legislation that does *not* require such approval. In some cases, this may cover matters bearing on autonomy, such as language.<sup>82</sup> An interesting question (but one that is beyond the scope of this article) is to what extent these regulations exceed the provisions of national regulations.<sup>83</sup>

### **The subprovincial level**

In contrast to the situation at AR level, many sub-provincial autonomous areas have enacted autonomy regulations and singular regulations. By 2003, according to the State Council, a total of 133 autonomy regulations and 384 singular regulations had been enacted.<sup>84</sup> Given the absence of any such regulations originating from the ARs, it is evident that all of these were passed by prefectural and county-level entities. Another source states that by the year 2000, 135 of the country’s 154 autonomous areas had passed autonomy regulations, while 238 singular regulations had been enacted.<sup>85</sup> According to a survey published in 1998, 84 percent of autonomous areas had enacted autonomy regulations and 5 percent were in the process of doing so. Most of the singular regulations appear to be enacted by a few autonomous prefectures and counties with active PCs.<sup>86</sup>

<sup>80</sup> Qin, “Lun zhiding zizhi tiaoli,” p. 6.

<sup>81</sup> The proposed new title for the LNRA was *minzu quyue zizhi jibenfa*. See “Decision on amending the LNRA,” p. 3. This high-level proposal was supported at central level and provincial level.

<sup>82</sup> Examples are the Tibet Autonomous Region Regulations on the Study, Use, and Development of the Tibetan Language (1987, amended in 2002) and the Xinjiang Uygur Autonomous Region Regulations on Language and Writing (1993, amended in 2002).

<sup>83</sup> When an unnamed autonomous region submitted a piece of legislation to the NPCSC for approval, it was sent back with the advice that the regulation should be passed as ordinary local legislation, according to Cai Dingjian, “Mechanisms for resolving conflicts of law in China” [Zhongguo falü chongtu de jie jue jizhi], paper presented at conference, Legal Perspectives of Constitutional Review, University of Hong Kong, April 2004, p. 2.

<sup>84</sup> State Council, Regional Autonomy, 2005, Section III.2.

<sup>85</sup> NPC MAC, “baogao,” 28 December 2000, p. 69.

<sup>86</sup> The survey found that 16 percent of autonomous areas had passed “rather a lot” of singular regulations, while 64 percent had passed “rather few,” and 20 percent none at all. “Appendix 1: Analysis of survey questionnaires on implementation of the LNRA and its amendment” [Fulu: yi, minzu quyue zizhifa shixing yu xiugai wenjuan fenxi], in Luo, *Wanshan minzu quyue zizhifa*, pp. 272-3.

The number of autonomy regulations means it is difficult to generalize about their content. According to Chao, writing in 1994, they “are usually copies” of the LNRA.<sup>87</sup> This is certainly likely for autonomous counties, considering the fact that a 1992 NPC LAC explanation asserted that “autonomy regulations of autonomous counties should not make rules” that go beyond the provisions of the Constitution and the LNRA.<sup>88</sup> The willingness of provincial-level PCSCs to pass them may be an indication that most autonomy regulations are relatively uncontroversial.

The current set of 25 prefectural autonomy regulations—all autonomous prefectures (APs) have enacted them, except the five in Xinjiang—were all passed between 1985 and 1990, although a number have subsequently been revised.<sup>89</sup> They are generally a collection of provisions from the LNRA combined with the relevant national policies, such as on the prohibition of drugs and human trafficking on the Burma-China border.<sup>90</sup> They also reflect the government and Party line of the time period when they were passed.

Some AP-level autonomy regulations do reflect a certain degree of autonomy. Yanbian Korean Autonomous Prefecture provides an example of what may be achieved—at least on paper—if an autonomous area uses its legislative power to protect its interests. Strategically located on the border with North Korea, Yanbian was the first autonomous area in the PRC to enact autonomy regulations, in 1985, following the passage of the LNRA.<sup>91</sup> These thus provided a model for other autonomy regulations. The regulations were extensively revised in 2003.

While they incorporate many features of the LNRA and central policy on autonomous areas,<sup>92</sup> the Yanbian Autonomy Regulations go beyond the provisions of national laws and policies. For example, they have entrenched status in the local legal order, in that their enactment and amendment may only be effected with a two-thirds majority vote of the Yanbian Prefectural People’s Congress (PPC).<sup>93</sup> Also, the regulations reserve a greater number of government posts for Koreans, requiring that the Chairman of the Yanbian PPCSC must be Korean,<sup>94</sup> that more than half of the leading officials in the

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<sup>87</sup> Chien-min Chao, “The Procedure for Local Legislation,” p. 114.

<sup>88</sup> Zhou, “Minzu quyue zizhi fa,” pp. 150-1.

<sup>89</sup> This list is based on the local regulations database in the Peking University legal website, available at <[www.chinalawinfo.com](http://www.chinalawinfo.com)>.

<sup>90</sup> A sample of such regulations was reviewed for this paper, including those from Linxia Hui Autonomous Prefecture (AP), Honghe Hani Yi AP, Yanbian Korean AP, Dali Bai AP, Xishuangbanna Tai AP, West Qinghai Mongolian Tibetan AP, Gannan Tibetan AP and Wenshan Zhuang Miao AP.

<sup>91</sup> Yanbian chaoxianzu zizhizhou zizhi tiaoli [Yanbian Korean Autonomous Prefecture Autonomy Regulations], passed by the third session of the Eighth Yanbian Korean APPC on 24 April 1985.

<sup>92</sup> Its main subject matters are the organization of the prefectural PC, PCSC and the people’s government; management of the economy and finances; and language, education, science and technology, and culture.

<sup>93</sup> Art. 12 in 1985 text, Art. 11 in 2003 revised version. Such a procedure appears to be the invention of the Yanbian PPC.

<sup>94</sup> Art. 13 in 1985 text, Art. 12 in 2003 revised version.



government “may” be Koreans,<sup>95</sup> and that the head or deputy head of the Prefectural Intermediate People’s Court (the highest court in the area) and the Prefectural Procuratorate “should” be Koreans.<sup>96</sup>

As for singular regulations enacted at prefectural and county level, the available lists of such regulations<sup>97</sup> appear to indicate that these are essentially analogous to general local legislation.<sup>98</sup> Since units at this level of the administrative hierarchy do not have the power to enact such legislation, autonomy powers are the only ones available to them. Some are labelled “implementation measures” (*shishi banfa*) or merely “measures” (*banfa*), commonly a designation for regulatory instrument that implements a higher-level regulation. Singular regulations passed at this level cover a range of topics, including the use of languages, compulsory education, ethnic education, management of natural resources, population control, regulation of specific local entities (such as environmental protection areas, historic cities, tourism sites), economic management, management of land, urban planning, public order, and “rights and interests.”<sup>99</sup> Interestingly, religion is apparently not a major subject of singular regulations.

One might expect that where modification power is explicitly delegated, autonomous areas would have been more proactive in exercising legislative power. However, this has apparently not been the case. Of the nine laws that had authorized modifying rules by 1998, such rules had only been enacted in relation to three: the Marriage Law, the Inheritance Law, and the Election Law. As mentioned above, to date ARs have only passed modifying rules relating to the Marriage Law and the Adoption Law. By 2003, a total of 68 modifying and supplementing rules had been enacted by autonomous areas.<sup>100</sup>

### **Conclusion: What hope for “extensive” autonomy?**

Lin argues that “tighter controls are imposed on the legislative authority of the five ethnic minority regions than on provinces and municipalities

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<sup>95</sup> Art. 16. The Constitution and the LNRA require that the head of government be a member of the minority exercising autonomy. Autonomy regulations from other APs specify that the number of leadership posts filled by minorities may be greater than their proportion in the population.

<sup>96</sup> Art. 25. The Dali Bai AP Autonomy Regulations (1986, amended in 2005) specify in Art. 22 that a member of the Bai group should fill the post of either the head or deputy head of the Prefectural Intermediate People’s Court and the Prefectural Procuratorate.

<sup>97</sup> See for example the list provided in Ao and Wu, *Zhongguo minzu lifa*, pp. 689-704, and the lists for Tibetan areas in Sorensen and Philips, *Legal Standards and Autonomy Options*, Appendix A, pp. 79-100.

<sup>98</sup> An assessment of the content of this legislation is beyond the scope of this article.

<sup>99</sup> This enumeration is based on the list of topics provided in Ao and Wu, *Zhongguo minzu lifa*, pp. 400-1. All those in the last category are from Yanbian, and cover protection of minors, “management” of “peasant [tax] burdens,” and establishment of trade unions in foreign-invested enterprises.

<sup>100</sup> State Council, Regional Autonomy, 2005, Section III.2.

directly under the [Central People's Government]. In other words, the five autonomous regions enjoy less legislative autonomy than ordinary provinces."<sup>101</sup> This is certainly true as regards autonomous legislative powers, and goes against the principles outlined in the Constitution, which clearly indicate that the autonomous areas are supposed to enjoy *more power* than other areas.<sup>102</sup>

The work of minority scholars and legal academics who write on autonomy law, as well as the NPC MAC, use the terrain of law to advance a vision of "extensive" autonomy that harks back to the promises made to minority groups in the early years of the PRC. Essentially, these involved a certain degree of accommodation with pre-existing political structures, reaching its largest extent in the Sino-Tibetan "17-Point Agreement" of May 1951.<sup>103</sup>

Some activist minority cadres seek to spur their co-ethnics to defend this version of autonomy by attributing the failure to exercise autonomy powers to a lack of awareness among local officials of the rights these confer.<sup>104</sup> Another view is that, as Yang puts it, "the most important reason why autonomous areas have not been able properly to exercise their legislative powers is that some theoretical questions have not been resolved."<sup>105</sup> The NPC MAC implicitly acknowledges opposition to the exercise of autonomy powers. In 2000, it supported a delegate motion calling for assistance to be provided to ARs to enact autonomy regulations. While the efforts of the ARs themselves would be important, the MAC stated, "[T]he relevant state organs should also provide the necessary assistance."<sup>106</sup>

Proponents of extensive autonomy use a tactic familiar from the field of constitutional law in China: what is termed by Anagnost "*prolepsis*," representing something as if it already exists.<sup>107</sup> Thus although the dominant forces in the Chinese government resist efforts to clarify the meaning of key terms in autonomy law—evident in the minimal revisions to the LNRA after years of proposals and discussion—these scholars and activists articulate meanings of the modification power and the status of autonomy legislation that express a vision of autonomy under a future constitutionally governed state.

By contrast, institutions such as the NPC LAC and certain State Council ministries seem to view autonomy as outdated and essentially unnecessary and, in the form proposed by activist scholars, a challenge to their power. In their view, the principal task of "nationality work" is economic development

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<sup>101</sup> Lin, *Constitutional Law*, p. 157.

<sup>102</sup> Zhou, "Minzu zizhi difang," pp. 77-8.

<sup>103</sup> This agreement was nullified after the 1959 Uprising and denounced by the Dalai Lama after he fled into exile.

<sup>104</sup> Kaup, *Creating the Zhuang*, pp. 118-120.

<sup>105</sup> Yang, "Minzu zizhi," p. 1.

<sup>106</sup> NPC MAC, "baogao," 28 December 2000, p. 69.

<sup>107</sup> Ann Anagnost, *National past-times: narrative, representation, and power in modern China* (Durham, NC: Duke University Press, 1997), p. 8.

of “backward” minority areas in accordance with the Han “advanced” model established by the Chinese state.<sup>108</sup> Thus the NPC LAC states that the need for autonomy legislation depends on whether the centre has “taken care” of the interests of the minority regions. The corollary of this is that the modification power is no longer needed, except where it may be used to advance the “modernization” of autonomous areas, as is emphasized in the LNRA’s requirement that special policies and flexible measures only be used to support state priorities.<sup>109</sup>

From this perspective, autonomy is history: it is a policy that served its purpose of incorporating peripheral areas into the new state and now has little meaning. A few researchers in key think-tanks argue that “collective rule” (*gongzhi*, between the state and autonomous areas, and between different ethnic groups, including the Han, within the latter) is now a better model for ethnic policies than autonomy.<sup>110</sup> Similarly, advocates of a return to China’s pre-modern policies of “culturalization” of “barbarian” minorities argue that “politicizing” ethnicity through measures such as autonomy serves only to inflame ethnic tensions.<sup>111</sup>

Debate over a key factor influencing autonomy legislation—the CCP—is generally absent in the sources used for this article. The Party has a key role in determining the general direction of legislation, and all laws are supposed to reflect CCP policies.<sup>112</sup> As has often been pointed out in the literature, Party dominance places inherent limits on the provisions for autonomy, since, for example, there is no requirement that local CCP leaders in autonomous areas be members of minority groups, and indeed the opposite is often the case.<sup>113</sup>

But CCP obstruction may not be the *pari comparisons* with decentralization in other developing countries.<sup>114</sup> Legislative powers, in particular, may be

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<sup>108</sup> According to former top leader Jiang Zemin: “There are two main tasks in nationality work in New China: the first is to guide the people of all nationalities to stand up and liberate themselves and choose the socialist road through the implementation of reforms of society; the second is to promote the common prosperity of all nationalities through carrying out the construction of socialism, speeding up the economic and social development of all nationalities, particularly the minority nationalities and the minority areas.” SEAC, *Zhongguo gongchandang guanyu minzu wenti*, p. 12.

<sup>109</sup> Art. 6(2).

<sup>110</sup> See scholars quoted in Gardner Bovington, *Autonomy in Xinjiang: Han Nationalist Imperatives and Uyghur Discontent*, East-West Center Policy Studies 11, 2004, pp. 45-6; and in Bulag, “Inner Mongolia,” p. 95.

<sup>111</sup> Rong Ma, “A New Perspective in Guiding Ethnic Relations in the Twenty-first Century: ‘Depoliticization’ of Ethnicity in China,” *Asian Ethnicity*, vol. 8, no. 3, October 2007.

<sup>112</sup> For a detailed enumeration of the multitude of ways in which the CCP involves itself in the legislative process, see Qin Qianhong and Li Yuan, “The Influence of the CCP on Legislating” [*Zhongguo gongchandang dui lifa de yingxiang*], paper on file with the authors.

<sup>113</sup> See Mackerras, *China’s Ethnic Minorities and Globalization*, pp. 41-43, Harrell, *Ways of Being Ethnic*, p. 77.

<sup>114</sup> See, for example, Y.P. Ghai and A.J. Regan, *The Law, Politics and Administration of Decentralization in Papua New Guinea* (Boroko, Papua New Guinea: National Research Institute), pp. 192-4 and p. 400.

underused.<sup>115</sup> “[T]he experience of China confirms an observation common to most studies of decentralization in developing countries: while certain legal powers and administrative tasks have been shifted to lower levels, the corresponding transfer of resources and decision-making power is mostly lacking. The legal transfer of law-making powers to local populations is often half-hearted, incomplete or even deceptive,” write Li and Otto.<sup>116</sup>

In the case of China, the comparative lessons should not be overstated. The efforts of ARs to exercise their legislative powers have been thwarted. Some of the elements considered basic for autonomy systems elsewhere are absent in the PRC system. Also, the contrast with the legislative output of ordinary local areas is instructive: there has been hardly any effort to ensure that their legislation stays within the limits set out for it, and a huge volume of regulations has been passed.

The views advanced by minority activists and legal scholars indicate that the current legal framework may not be inherently incompatible with “genuine autonomy” in some form. The promise of an “extensive” autonomy making use of a modification power defined by its historical roots to allow for different “systems” *could* potentially provide some space for real self-government, given the necessary political will. Yet because of the lack of legal clarity on autonomy powers, divisions of opinion and interest within the Chinese state would likely continue to make the realization of that vision difficult, even if such a change of heart did occur.

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<sup>115</sup> See, for example, Richard Simeon and Christina Murray, “Multi-Sphere Governance in South Africa: An Interim Assessment,” *Publius: The Journal of Federalism*, vol. 31, no. 4 (2001), pp. 77-80. The South African example highlights the barriers created for provincial autonomy by the dominance of a strong, centralized party.

<sup>116</sup> Yuwen Li and Jan-Michel Otto, “Central and Local Law-Making: Studying China’s Experience,” in Eduard B. Vermeer and Ingrid d’Hooghe, eds., *China’s Legal Reforms and Their Political Limits* (Richmond, Surrey, UK: Curzon, 2002), p. 2.