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Analysing Central-local Relations in Asian Constitutional Systems

Decentralising Power in 21st-Century Asia

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DECENTRALISATION

DEcentralisation is a development that has been implemented in various places across the globe over some decades, especially since the early 1990s. It is a function of modern states that in the search for national identity and common citizenship, in the attempt to reach all areas and peripheries, and in the increase of state power more generally, they have deprived local communities of the ability to make their own decisions. Indeed for some states, such as Supomo's 'integralist' Indonesian state,¹ or Mao's communist/collectivist China or, like China, the single party state of Vietnam, the idea of local self-government would be anathema: the only proper role for local government would be to implement faithfully decisions reached centrally. The Asian developmentalist states of the post-war era did not in general embrace a constitutionalist form of local government in which autonomy could be exercised and local initiative and competitive desire released. Japan may be an exception to this in some respects.²

However, since the early 1990s in particular, it has become quite common for states to decentralise both decision-making and service delivery. This trend has not been an isolated one but has gone hand-in-hand with democratisation, good-governance reform, privatisation and the reform of the structures of public administration in the search for more equalised development and cost-effective government.³ This has occurred even in Asia,

¹ T Lindsey, 'Indonesia: Devaluing Asian values, rewriting the rule of law' in T Lindsey (ed), *Law Reform in Transitional and Developing States* (Abingdon, Routledge, 2007) ch 9.

² See ch 7 by Shigenori Matsui.

³ D Oluwu, 'Democratic decentralization and multi-level governance in developing countries' in A Munsch (ed), *Decentralisation and Legitimacy, Aladin Yearbook, 2001/2* (Leiden, Association for Law and Administration in Developing and Transitional Countries, 2003) ch 1, 9–10.

with its predominance of unitary states and dominant-party or one-party political systems. In Europe, it is worth noting, the dominant paradigm historically is that local government existed before national government and survived its establishment, contributing to the establishment of central government. In Asia, however, a dominant paradigm in recent times has been a deliberate decentralisation of power from a powerful or imperial centre that has strongly asserted control over its peripheries.

States in Asia have decentralised in pursuit of a number of different purposes. One is to galvanise local initiative and encourage policy development, for example to draw foreign investment or to find better ways of achieving environmental sustainability. Decentralisation has also served to resolve tensions between different ethnic, religious or language groups, or between political parties (often parties represent such groups), by giving them some measure of control over their own futures, especially in the case of minority groups. For this reason, within Indonesia for example, Aceh has been given special autonomy in the form of control over its natural resources and its power to implement *shari'a* law.⁴ This aspect of decentralisation is discussed in the next section.

At the same time decentralisation has not always been easy to implement.⁵ This has been because of its association with democratic development, which can create tensions between the centre and the locality; or because it affords more opportunities for corruption; or because it is simply difficult to develop the new models for central-local relations that are required, and that can also be complex and confusing to administer even when correctly identified. Shigenori Matsui's chapter on Japan (chapter seven) reveals that, even in a state with stable central-local relations such as Japan, confusion and mismanagement can arise when an emergency situation challenges the normal condition of such relations, giving rise in turn to fresh examination of those relations. All this points to a need for intelligence and clarity in the design of central-local relations, and to a need to constitutionalise these relations and the mechanisms that are needed to conduct them. There has to be an effective relationship between the political, fiscal and administrative aspects of central-local relations if the enterprise of local self-government is to work.

From the studies in this book it would appear that all the states in question have decentralised, but at the same time all have problems with central-local relations. Vietnam symbolises one side of this problem, through what Bui Ngoc Son calls its Constitution's 'Delphic provisions, which both stipulate political decentralisation and insist on central control over local

⁴ See ch 5 by Simon Butt.

⁵ D Rondinelli, 'Government decentralization in comparative perspective' (1981) 47(2) *International Review of Administrative Sciences* 133.

government'.⁶ The authors in this volume appear to think that decentralisation, or more decentralisation, is a desirable outcome, or else is a desirable reform for the various states they discuss. One possible outlier here is Shigenori Matsui's discussion of central-local relations in Japan in chapter seven, but his topic is central-local relations in situations of extreme emergency, following the great earthquake and tsunami of 2010 and the Fukushima nuclear incident. In these circumstances he finds that the centre had insufficient power to control and direct the actions of local government. However, he also finds that insufficient autonomy was afforded to local authorities in their engagement with the recovery and rehabilitation process following the emergency. This position is not in fact necessarily inconsistent with advocating more decentralisation in general. Indeed, the author finds that Japan's government system is too centralised. His chapter is, however, a reminder that there must always be reserve powers to deal with some kinds of accident and natural disaster, and this can be extended to insurgency, breakdowns of law and order, and even constitutional breakdown or inability to discharge financial obligations or statutory duties. Central-local relations need to embrace issues of high constitutional import.

Where the policy of decentralisation has been pursued, one might well also ask whether this is simply a result of democratisation, or is rather an attempt to retain control over local decision-making and thereby re-establish central authority in place of power in changed political conditions. It appears from the contributions to this book that, whatever the cause, decentralisation does in general lead to increased local political participation.⁷ Nonetheless, the relevant factors in these states in terms of the context of decentralisation could hardly differ more: Myanmar is emerging from half a century of military dictatorship and is threatened by ethnic divisions; China has decentralised but faces problems of legislative conflicts, effective dispute resolution, corruption and democratic deficit; Indonesia presents much the same kind of picture, having decentralised as part of *reformasi* from 1998 in order to by-pass separatism and deepen democratic reforms, but again we find legislative conflicts, confusion and the lack of an effective regulatory mechanism; Vietnam has undertaken some cautious and limited political decentralisation through a recent constitutional revision, following on from earlier forms of fiscal and administrative decentralisation, but that process is just beginning; Taiwan is a stable state with a history of authoritarian government, but it has developed a complex system of local government during the period of multi-party democracy since the mid-1980s: its problems lie in the area of dispute resolution and the role of the judiciary; Malaysia is

⁶ Ch 4, 'Introduction'.

⁷ R Crook and J Manor, *Democracy and Decentralisation in South Asia and West Africa* (Cambridge, Cambridge University Press, 1998).

the sole federal system considered here, and under authoritarian government since 1970 has, overall, centralised rather than decentralised, so that federalism, as well as local government, searches for a new role and relevant forms of accountability in an emerging two-party system.⁸ These problems are examined here via the ongoing debate about local government elections.

One clearly successful example of decentralisation in Asia is the Philippines, which in 1991, under the Local Government Code, embarked on ambitious plan to empower local government, automatically transferring 40 per cent of national revenues to local authorities, giving them extensive discretion as to how to deploy these resources and including civil-society organisations in decision-making, for example by allowing them to occupy a quarter of all seats on the council. As Eaton puts it, the idea was that local councillors should not be dependent on national politicians ‘for getting windows fixed in city hall’.⁹

In the ensuing chapters we shall see that central-local relations in Asia are a highly contested space, where the context of local politics and history is crucial for understanding and where the outcomes go to the fundamentals of constitutional ordering.

ETHNIC RIGHTS, POWER AND CONSTITUTIONAL ORDERING

In any discussion of central-local relations examining the ways in which contextualised constitutional systems deal with complex and difficult issues of territorial governance, the questions of ethnic status, ethnic regions, ethnic claims and representation, and regional autonomy stand out. How constitutional systems deal with these difficult and sensitive issues can play an outsized role in the success or failure of constitutional arrangements and legitimacy, national harmony, political stability and democratisation. As Melissa Crouch points out, these issues stand out particularly in the recent and fast-moving context of Myanmar (Burma), where ‘the central Government now faces the need to resolve ethnic conflicts and grievances as part of the process of transition to a quasi-civilian democracy under the 2008 Constitution’,¹⁰ and a significant part of the population—and an even more significant source of constitutional debate and conflict—is a vibrant community of ethnic peoples.

States can, as Crouch indicates, provide status to or recognition of ethnic and cultural groups and their rights in various ways through constitutional processes. These processes can give rise to significant and interesting

⁸ A Harding and J Chin (eds), *50 Years of Malaysia: Federalism Revisited* (Singapore, Marshall Cavendish, 2014).

⁹ K Eaton, ‘Political obstacles to decentralization: Evidence from Argentina and the Philippines’ (2001) 32(1) *Development and Change* 101.

¹⁰ Ch 6, ‘Introduction’.

issues, both in federalism and in relation to local government, especially where states or regions are themselves ethnically complex, as is the case in Myanmar. Myanmar has begun to provide such recognition, shifting downwards the administration of local areas while continuing and adapting past methods in which ethnic nationalities are represented in both houses of the national parliament. All of this has been accomplished under a continuing, although since 2010 increasingly more open, militarised regime that now recognises the need to acknowledge cultural and ethnic rights. In Myanmar, as in some other states, these issues could not be more important. As Crouch notes, '[t]he relationship between the national union Government and ethnic nationalities is of crucial significance, because one of the ongoing challenges for the Myanmar Government moving forward is how it deals with the demands of ethnic nationalities'.¹¹

For the Government, and in the Myanmar constitutional processes now embracing constitutional revision, these challenges and their ongoing treatment have taken three key forms. First, there is what Crouch (following Levy) terms 'symbolic recognition' of certain ethnic nationalities and certain rights, a framework based in both representation and control. Secondly, Myanmar has developed a system of 'special representation' at state and regional levels, in which Ministers of National Race Affairs represent major ethnic groups in those areas. Crouch notes that this 'allows both for fragmentation and for Burman [majority ethnic group] representation in the ethnic-based states, although all such Ministers have their responsibilities controlled by the central Government'.¹² And, thirdly, some ethnic areas are now designated as Self-Administrative Zones or Divisions, in a process that Crouch calls 'limited self-governance'.¹³

In the Myanmar context, these steps appear to recognise and assuage both national and local power, and are directly related to historical conflicts. Such recognition, Crouch argues, in which the central government permits and recognises some ethnic and regional rights, is 'a concession that primarily, though not exclusively, relates to previous ceasefire deals in the late 1980s and early 1990s. The implication for all three forms of decentralisation, however, is that the central Government retains ultimate control under the terms of the 2008 Constitution'.¹⁴ In these complex relationships the central Government and the dominant ethnic group continue to retain the upper hand, while ethnic and regional groups continue to demand more recognition and status.

Yet these institutional and geographic arrangements—both in terms of definitions and in terms of powers—may be in flux as a result of constitutional politics, ordinary politics and policy, a national census and other

¹¹ Ch 6, 'Conclusion'.

¹² *ibid.*

¹³ Ch 6, 'Limited Self-governance: Self-administered Zones and Divisions'.

¹⁴ Ch 6, 'Conclusion'.

factors. Power remains centrally held, but the future is not certain, and the granting of ethnic and regional rights, even though circumscribed, holds open some uncertainties for the future:

[A]uthoritarian regimes may include provisions for special recognition of cultural rights for some ethnic groups as a means of facilitating negotiations and peace deals with such groups. The creation of these rights can therefore be used as part of the legitimising function of the constitution. Yet the meaning of these rights is dynamic, not static, and they must continue to be assessed, over the coming years, in order to gauge the impact of these provisions on the shifting nature of central-local relations more broadly.¹⁵

Given six decades of extreme ethnic conflict in Myanmar, which continues in spite of a cautious democratic opening, the issue of ethnic localism is deeply implicated in the future of the country.

LOCAL SELF-GOVERNMENT, LOCAL ELECTIONS AND LOCAL REGULATION: HOW MUCH AND HOW FAR?

Elected local self-government and the institutions of self-government are another important topic in the constitutional ordering of territorial governance and central-local relations. In Malaysia, a nation with a federal structure and what Andrew Harding terms ‘a Westminster-type democratic Constitution embracing constitutional monarchy, with an ethnically divided society under an authoritarian state evolving, seemingly, into a two-party system’,¹⁶ the issues of local self-government are even more fraught than in other states.

The complex nature of developments in decentralisation is exacerbated by polarised views on local self-government. Malaysia’s governments since 1957 have followed an authoritarian and centralised model in which local self-government is distrusted and kept weakened, with power resting in central authorities and states rather than moving, even slowly, to localities. Others, especially in the opposition coalition, seek more authority and power for local self-government and local elections, an

opportunity for the exercise of autonomy that can help to lower the tensions of contestation over big prizes at the national level, empowering communities irrespective of ethnic composition, and empowering ... fragile communities such as small indigenous groups ... which have never had elected local government authorities.¹⁷

Thus the constitutional and normal politics of local elections and local self-government can be highly controversial, but so too are the practicalities of

¹⁵ *ibid.*

¹⁶ Ch 8, ‘Introduction’.

¹⁷ *ibid.*

three potentially active levels of government, particularly in smaller nations like Malaysia, even when, as in Penang, active state government seems to have had a beneficial effect. Yet the issues keep arising, in Malaysia and a number of other countries, for historical developments press forward the claims for local self-government. As Harding notes,

while authoritarian government has been the norm in post-war Asia ... the progress towards constitutional government that we can see across most of the region raises new issues in central-local relations ... Can local communities take responsibility for their own local issues without arousing the Leviathan of authoritarian government? Would a reinvigoration of local government via [local elections] represent a significant shift in implementing democracy?¹⁸

Regardless of how the politics and practicalities of these issues are resolved, the controversies and struggles over local self-government and local elections can only increase in the decades ahead as citizens demand more government accountability, better provision of public services, better opportunities for their children and themselves, and even, in some states, explicitly more democracy. In the Malaysian case, then,

the redefinition of central-local relations ... seems inevitably to be leading towards a more open and more democratic form of constitutional ordering in which local self-government will play a new and potentially creative role, as state government is already doing at a higher level. Ultimately, the issue of [local elections and local self-government] is a test of the reality of federalism within a structure that has been seen until recently as either quasi-federal, or as representing a highly centralised form of federalism.¹⁹

In Indonesia, the political momentum toward more decentralisation of central-local relations, or ‘regional autonomy’ as it is termed there, including regional power to issue regional regulations, results from an array of factors, as Simon Butt discusses in chapter five. The legacy of strong centralised power, a sense that the ‘central government was predatory, or at least exploitative’, particularly with respect to natural resources, ethnic, religious and cultural autonomy demands—all of these contributed toward policy-making in the direction of more decentralisation and regional autonomy.

The results of this process have, however, been nuanced and mixed: ‘[W]hile local governments have been given significant power to regulate and otherwise manage their affairs, the national Government has retained ultimate legal control over them.’²⁰ And yet the central Government and the judiciary have only rarely acted to block regional bylaws, a function of executive decision-making, ‘unclear and overlapping ... division of power as between the various tiers of government’,²¹ and unclear and weak judicial

¹⁸ *ibid.*

¹⁹ Ch 8, ‘Conclusion’.

²⁰ Ch 5, ‘Introduction’.

²¹ *ibid.*

jurisdiction. ‘The net result of the failure of these mechanisms’, Butt writes, ‘is that, for the most part, local governments have had *carte blanche* to enact laws of virtually any subject matter without paying regard to national laws—even the Constitution—provided that they do not seek to encroach on central-government revenue streams.’²² And in turn, what has resulted is significant legal inconsistency, ‘a virtually impenetrable tangled mass of contradictory law, leaving citizens and legal entities unable to distinguish between laws they must follow and laws they can ignore’.²³

Over a decade now after decentralisation took hold in Indonesia as part of *reformasi*, inconsistency, lack of executive exercise of power in reviewing regional regulations and weak judicial jurisdiction hamper the consistent development of a clear delineation of central and local power, in turn contributing to local governments exercising excessive rule-making, particularly to raise revenue, and the exercise of power with too much discretion, corruption and other problems. As Butt points out, while decentralisation can often be regarded as being of positive value, it can be used for the wrong purposes and in an unchecked manner, leading to abuses, lack of equity and severe legal inconsistency.

At times the exercise of national power is needed:

Many important guarantees, such as human-rights protections, are provided to all citizens, regardless of the region in which they live, by national laws, including the Constitution, and local governments must be compelled to follow them and held to account if they do not.²⁴

Where local power goes unchecked, and legal inconsistency reigns, broader constitutional values—such as basic rights—may be implicated and endangered as well. The recent election as President of Indonesia of a former Governor of Jakarta, Joko Widodo, with a strong record of local action on poverty and other issues, may indicate the possibility of these issues being addressed creatively in the next stage of *reformasi*.²⁵

THE DILEMMAS OF CENTRAL AND LOCAL POWER

In chapter seven of this book, Shigenori Matsui looks at the state of central-local relations in Japan through a different lens. Positing the key role of central power in Japan’s unitary and centralised state, and yet the significant (although still highly controlled) delegation of power from central to local

²² *ibid.*

²³ *ibid.*

²⁴ Ch 5, ‘Observations and Conclusions’.

²⁵ ‘Local experience to benefit President elect Joko Widodo’, *Wall Street Journal South East Asia*, 24 July 2014, available at <<http://blogs.wsj.com/searealtime/2014/07/24/local-experience-to-benefit-president-elect-joko-widodo/>>.

authorities to provide services and extend governmental authority, Matsui asks how the major Tohoku earthquake of March 2011 and the nuclear plant meltdown at Fukushima have affected central-local relations in Japan.

In the earthquake, despite local (municipal) obligations to respond to disasters, ‘many municipalities suffered tremendous damage ... far beyond their capacity to respond. Rescue, recovery and reconstruction thus necessitated a much stronger role for the central Government’,²⁶ potentially stifling the exercise of local authority and decision-making. The case of the Fukushima tragedy, however, illustrated the lack of power—legal and political—that could be exercised by the central government, to the point that ‘the central Government [had] to seek consent from local governments in order to build interim storage sites for nuclear waste and to restart the nuclear power plant ... casting significant doubt on the ability of the central Government to carry out these national tasks’.²⁷

It remains too early to say whether these tragedies will result in a significant reordering of power in central-local relations in Japan. The earthquake experience has spurred the Japanese Government to try to better align central and local obligations, and to mandate that prefectural and municipal governments revise disaster plans. The Fukushima accident has prompted the central Government to strengthen central capacity to deal with such events, through the establishment of a Nuclear Regulatory Authority, as well as higher safety standards for plant operators and revised mandates to local authorities on drafting evacuation plans.

At the same time, Matsui notes,

no significant changes ... alter the relationship between the central government and the local government. There still is no statute authorising the Prime Minister or the central Government to take over the tasks of the local government in times of emergency. Reconstruction is not left to the autonomous decision of the local government ...

[N]o consensus has yet been found on the proper relationship between the central Government and the local government, and there is no serious attempt to reconsider the proper relationship between the central Government and the local government on these disaster issues.²⁸

In the end, Matsui tells us, the impact of tragedy on central-local relations may be a greater understanding of the need for both enhanced central power and strengthened local autonomy in times of disaster, along with considerably stronger central-local coordination.

‘Historical legacies and geopolitical complications’ affect territorial governance and central-local relations in many Asian territories, but perhaps no more so than in Taiwan. As Jiunn-rong Yeh writes in chapter three, there

²⁶ Ch 7, ‘Introduction’.

²⁷ *ibid.*

²⁸ Ch 7, ‘Lessons Learned’.

such legacies and complications ‘are deeply embedded in Taiwan’s constitutional journey’. The long political debate over Taiwan as a province of the People’s Republic of China, and as a potential state in its own right, has further complicated the internal balancing of power between the central and the local. The traditional view was fairly clear—‘limited autonomy within the highly centralised control of the national Government in the framework of a unitary state’,²⁹ as Yeh describes it.

Yet constitutional and political provisions for central-local relations ‘have been constructed and reconstructed over time against the dynamic relationship across the Taiwan Strait, as well as against the backdrop of democratic transition in Taiwan since the late 1980s’³⁰ and the rise of Taipei. And how the rapid economic and political transitions within Taiwan should affect the traditional constitutional ordering of central-local relations remains unclear; there is something of a gap between text and reality when the Constitution says one thing and reality seems to be showing us another. At the same time, also importantly, we witness ‘the emerging significance of megacities, such as Taipei, that enjoy disproportionate powers and resources as against other autonomous localities’.³¹

Taiwan’s democratisation has thus

transformed the central-local relations in the Constitution from a limited autonomy in a unitary state into a hybrid and dynamic transitional federalism.... Against this backdrop, above all, Taipei’s dual role of national capital on the one hand and local government on the other thus becomes the centre of political conflicts in the post-authoritarian era.³²

Democratisation has altered the central-local balance, from the central in the Kuomintang area (which recognises the need for some local devolution) to more power at local levels today.

Under such pressures, ‘limited autonomy within the highly centralised control of the national Government in the framework of a unitary state’ has been transformed into a ‘more hybrid and dynamic transitional federalism’,³³ a series of developments in which local autonomy has been strengthened and, ‘[i]nstead of being positioned at the periphery of a big China, Taiwan is now placed at the centre of its own territorial imagination for constitutional design’.³⁴

That new constitutional design has reduced the impact of ‘rigid and complicated’ regulation of local government; simplification of local government,

²⁹ Ch 3, ‘Conclusion’.

³⁰ Ch 3, ‘Introduction’.

³¹ *ibid.*

³² *ibid.*

³³ Ch 3, ‘Conclusion’.

³⁴ *ibid.*

and simplification and reduction of some aspects of the role of the central (Taiwan) Government; new power to the municipalities; new authority for local governments over finances and other means toward more autonomy; and a better balance in regional development on Taiwan through the comparative empowering of more regions and regional officials. Judicial power has assisted these transitions, though not without significant complications for the courts.

And the Taiwanese story is not finished:

Despite profound change over the last several decades, this evolution will likely continue as central-local relations evolve over time in new institutional settings and in the context of transitional politics. Dynamic central-local relations will continue to play a significant role in Taiwan's transitional constitutionalism.³⁵

Similar dilemmas of central and local power play out in China, where, as Qianfan Zhang discusses in chapter two, territorial governance and central-local relations in this unitary state are characterised by 'political and administrative controls [that] flow from top to bottom, a mode of governance that has had a serious impact on democracy and the rule of law'.³⁶

Reforms since the late 1970s have not changed that basic structure of top-down governance. That 'lack of local democracy', and growing local abuses of power, corruption and other problems, have even led to more centralisation of power on such issues. China's history shows both the dangers and the possibilities of decentralisation, including in the disastrous Great Leap Forward of the late 1950s. And even limited attempts at administrative and legislative decentralisation need to be accompanied by central efforts to reassert order in the legal and economic systems.

In recent years, along with some careful reforms in central-local relations and some cautious decentralisation, power has also become recentralised, especially after new Party leaders took office in 2013. Recentralisation now goes hand-in-hand with certain devolutionary reforms that loosened some land-holding restrictions and eased the formation of some local associations to a degree. 'This logic of centralisation', writes Qianfan Zhang, 'is easy enough to understand. One can readily see that many reform measures directly conflict with the interest of local officials, who have every reason to impede these salutary measures issued by the Central Government'.³⁷

Such decentralising measures can be supported by more democracy and the rule of law, but that is not Party policy in China at this point. Instead,

the Communist Party and the Central Government busy themselves with crushing civil movements, persecuting social activists, silencing dissenting voices in the press

³⁵ *ibid.*

³⁶ Ch 2, 'Introduction'.

³⁷ Ch 2, 'New Reforms Driven by Centralisation'.

as well as on the Internet, and sponsoring anti-constitutionalist propaganda ... Since society is not allowed to play a vital role in promoting reform, the moving force for reform against the status quo can come only from the very top.³⁸

Reforms that are guaranteed by central control imply, however, a contradiction in terms that is difficult to overcome. The central state cannot effectively oversee all local governance in China, plus itself. In Qianfan Zhang's view, popular participation is the element that is so far unheeded and unwanted by a powerful central state, but which is necessary for devolutionary and any sort of democratic reforms to take place:

Knowledge and information about local grievances that affect common people ... depend on society, as do the courage and resolve to eradicate these grievances by institutional reform that is resisted almost uniformly by officials at all levels. Since 'reform' as commonly understood is for the benefit of the people, a reform without popular support is necessarily empty, and a reform program depending purely on centralisation can be nothing but a chimera.³⁹

Despite this difficult predicament, the author finds hope:

Even if China is to keep a unitary framework for such a vast territory, one-party despotism is far from being its only option. There is no reason why it cannot have local democracy, by which elected local officials are effectively prevented from abusing public power. Nor is there any reason to believe that it is obliged to confer plenary and supreme powers on the central Government and make it the well-spring of despotic abuses ... Finally, in order to implement the division of powers between the central and local governments, and to ensure that national laws are effectively enforced throughout the country, China must establish some form of judicial review ...⁴⁰

Vietnam, like China, remains controlled by a single Communist Party, and here some of the dilemmas and challenges of central-local relations are similar, while other patterns show some differences. Fiscal and administrative decentralisation has proceeded to a significant degree since Vietnam's *doi moi* (opening) reforms began in 1986, but, until recently, broader forms of political decentralisation were a different matter altogether. As Bui Ngoc Son notes, and with the exception of a 'grassroots democratisation' program introduced after anti-corruption protests in 1997, Vietnam was 'willing to fiscally and administratively decentralise for effective public governance, but would only take cautious steps in regard to democratic or political decentralisation because of its anticipation of political difficulties'.⁴¹

The cautious moves toward some form of political decentralisation were first agreed upon and announced by the Vietnamese Communist Party in

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Ch 4, 'Political Decentralisation'.

January 2011, and then incorporated into a lengthy and controversy-laden process of constitutional revision that ended in late 2013. They were driven by a coalition of reformists, as Bui Ngoc Son describes, who called for ‘popular election of local governors, removal of the People’s Council at district level and judicial review of local legal documents’.⁴²

After much debate, the revised Constitution that was adopted in November 2013 (effective January 2014), established

principles reflect[ing] the discourse of political decentralisation. [On] specific proposals for political decentralisation, the Constitution explicitly rejects the call for a specialist institution of judicial review, but does not provide clear answers to other substantial questions, such as popular elections of local leaders or removal of the People’s Council at district level, yet still opens the door for such practices.⁴³

New legislation will need to concretise these new principles, and the debates over that legislation will determine much about how far Vietnam’s political decentralisation proceeds.

CONCLUSION

From these important and revealing studies we can draw some conclusions.

It appears that local self-government is being increasingly recognised as a means of deepening and embedding democracy, or at least as taking the heat off central government from the viewpoint of accountability. It is also a means of alleviating intense struggles within societies divided politically, ethnically or religiously, providing a method of power-sharing. Further, it is a spur to effective delivery of services and programmes, matching central policies with local conditions and preferences.

There is clearly a growing desire amongst local communities across Asia to achieve or retain control over the decisions that affect them most locally. Shigenori Matsui’s chapter cuts across many of the issues raised in the other chapters in this book by looking at a particular, and pressing, administrative issue that is increasingly being dealt with in an Asian context, namely, disaster response. Matsui finds, as we have seen, that there are problems in this example, and the piece may be of some direct importance in designing central-local relations more generally. It is a salient reminder that, in the end, it is national interests that need to be served by local government, and that attention needs to be paid to central-local relations in a multiplicity of contexts, not simply in ordinary cases. Thus far Asian constitutional

⁴² Ch 4, ‘Constitutional Discourse on Political Decentralisation in 21st-Century Vietnam’.

⁴³ Ch 4, ‘Conclusion’.

systems have largely experimented with local self-government, and central-local relations remain uncertain in many ways. We can see this with the new initiatives in China, Vietnam, Malaysia, Indonesia and Myanmar. To this extent central-local relations have not, largely, been crystallised in constitutional terms, though recent developments in Vietnam are an exception, in part. Nor is there any obvious consistent Asian model for central-local relations.

This remains an issue for future discussion of constitutional design. How far can local self-government go? A balance needs to be struck between two forces: first, the demand for local democracy and political autonomy; and, secondly, the needs of national development. The spectre of corruption emphasises the need for some caution: in some ways more local government means more opportunities for corruption and a greater need for vigilance. In this sense more local government can be both an opportunity for better governance and a threat to better governance. It is not in our view wise to attempt to find generally applicable answers to these questions, because the context will invariably dictate the best solutions. The requirements of modern urban life in Malaysia will not be the same as those of nation-building in Myanmar.

One aspect that remains unclear at this stage is the definition of reserve powers of central government: in what circumstances and on what basis will central government be able to override local powers? This issue relates to the degree of entrenchment of local government systems within the constitutional structure. Do stakeholders even see local government as a constitutional issue? Clearly in Taiwan, Malaysia, Indonesia and Vietnam they do, but in China perhaps not—though in China, where the entire issue of constitutional revision is not yet back on the agenda for political reasons, we would not be surprised to see devolution as a major topic of constitutional debate when open debate and some guided revision are permitted to occur.

Yeh Jiunn-rong's chapter on Taiwan and Bui Ngoc Son's chapter on Vietnam (in its discussion of issues of constitutional review) remind us of an issue that is not explored very much in the other chapters, namely, that if local self-government is going to be pursued seriously, there is need for a good dispute resolution system. This might operate at two levels: first, the constitutional level, implicating the judiciary, as has happened in Taiwan; and, secondly, the executive/ informal level, where cooperation is required between levels of government in the overall national interest.

Ultimately it is clear that constitutionalism itself in its various aspects is deeply implicated in the problems of central-local relations. We can expect important and interesting further developments in Asia in the areas discussed in this book.