

The National Security Law, “One Country Two Systems”, and Hong Kong’s National Security Apparatus: The Coup De Grace to Hong Kong’s Ideological Independence and Democratic Autonomy

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Abstract

This paper examines the future of the “One Country Two Systems” principle amid China’s recent encroachments on Hong Kong’s democratic autonomy and ideological independence through the implementation of the National Security Law. This paper argues that the law was introduced by China as a response to the perception of threat to “One Country, Two Systems” in Hong Kong, creating an irreversible shift from “One Country, Two Systems” toward “One Country, One System.”

Introduction

Since Hong Kong’s handover from Great Britain to China in 1997, the former colony’s Basic Law has served as the law of the land and the constitutional framework for the “One Country, Two Systems” principle. The promulgation of the Sino-British Joint Declaration in 1984 stipulated that “One Country, Two Systems” would remain for 50 years, expiring in 2047.¹ Under the system, the People’s Republic of China resumed the exercise of sovereignty over Hong Kong after one and a half centuries of colonial rule by the British Empire. Hong Kong would retain its “capitalist system and lifestyle” separate from mainland China’s communist system and enjoy “a high degree of autonomy.”² In the eyes of China’s central government, “One Country, Two Systems” served as a viable solution to the problem of Chinese reunification.

Nevertheless, key post-handover events such as the 2014 Umbrella Revolution and the 2019 Anti-Extradition Law movement have brought about the increased presence of political resistance against the authorities in Hong Kong, known officially as the Government of the Hong Kong Special Administrative Region. Both the Hong Kong and Chinese government’s responses

¹ “Official Publication: Sino-British Joint Declaration on the Question of Hong Kong.” *Loyola of Los Angeles International and Comparative Law Review* 7 (January 1, 1984): 139–64.

² *Ibid.*

to the broader pro-democracy movement in Hong Kong reveal cracks in “One Country, Two Systems,” calling into question whether Hong Kong’s increasingly pro-democratic socio-political landscape can amicably coexist with the Chinese Communist Party’s authoritarian rule.³

But the implementation of the National Security Law was what brought the “One Country Two Systems” policy to an irreversible crossroads. The textual content of the security law was only disclosed to the Hong Kong people at the time of its promulgation, June 30, 2020, hours before the 23rd anniversary of Hong Kong’s handover.⁴ The law identifies four new categories of criminal behavior: secession, subversion, terrorism, and collusion with foreign forces. Each provision covers individuals who incite or abet the above offenses, with a maximum sentence of life imprisonment with the possibility of extradition to mainland China to face trial in mainland courts.⁵ Further, the security law contains extraterritorial capabilities: violations can be applied to individuals outside Hong Kong.⁶

Beyond this, the law has sparked broader institutional changes to the way of life in Hong Kong, including a sharpened divide between pro-Beijing and pro-democracy forces (Hong Kong’s two primary ideologies) and the Chinese Communist Party’s direct meddling in Hong Kong’s legislative and political affairs.⁷ Merging Hong Kong’s national security apparatus with that of mainland China through the formation of a covert police-legal deep state signals a tectonic shift in

³ Zhu, Han. "Beijing's "Rule of Law" Strategy for Governing Hong Kong: Legalisation without Democratisation." *China Perspectives*, no. 1 (116) (2019): 23-34.

⁴ Dapiran, Antony, Jane Golley, Linda Jaivin, and Sharon Strange. “Hong Kong’s National Security Law.” Essay, 59–66. ANU Press, 2021.

⁵ Ibid.

⁶ Ibid.

⁷ Lo, Sonny Shiu-Hing. “The Consequences of China's ‘Comprehensive Jurisdiction’ over Hong Kong.” Asialink. The University of Melbourne, July 8, 2021.

“One Country, Two Systems.” When viewed in the context of the CCP’s continued and assertive affronts to Hong Kong’s post-handover autonomy, it comes as no surprise that Hong Kong is now under the direct rule of China’s central government, culminating in the substance of “One Country, Two Systems” tilting towards “One Country, One System.”

Consequently, Hong Kong’s unique characteristics that make it a key international financial center and a gateway from Asia to the West continue to deteriorate rapidly, concurrent with the decline of press freedom and the freedom of speech.⁸ Since the law went into effect over 13 months ago, it has become increasingly apparent that the law is aimed as much at activists, protesters, political candidates, and journalists in their exercise of rights protected by the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, as it is at terror and guerrilla activities endangering national security.⁹

The fate of “One Country, Two Systems” cannot be assessed appropriately without a robust and holistic overview of the historical context leading up to the CCP’s implementation of the security law. Irrespective of what, if any, of Hong Kong’s autonomy remains post-National Security Law, Hong Kong has experienced numerous challenges to “two systems” worth explaining. Thus, this paper proceeds in two parts. Part One examines the framework, development, and evolution of “One Country, Two Systems” by analyzing key events in post-handover Hong Kong. The focus of part one is on four events that research indicates were instrumental in establishing a “One Country, Two Systems” that emphasizes the “One Country” aspect: the 2003 attempt to pass a National Security Bill under Article 23 of the Basic Law; the 2012 Education Bureau’s proposed Moral and National Education Curriculum laden with pro-

⁸ Lawrence, Susan V, and Michael F Martin. “China’s National Security Law for Hong Kong: Issues for Congress.” Congressional Research Service, August 3, 2020.

⁹ Ibid.

communist and pro-China material; the 2014 Umbrella Movement and the rise of key pro-democracy voices such as those of Joshua Wong, Nathan Law, and Lester Shum; and, finally, the 2019 Anti-Extradition Law Amendment Bill Movement. Emphasis is on the Chinese response, tracing the threats to Hong Kong's autonomy and legal protections with each event. This paper argues that Beijing introduced the National Security Law as a response to its perception of a crumbling “One Country, Two Systems” framework incompatible with Chinese reunification.

Part Two analyzes the future of “One Country, Two Systems” and Hong Kong’s national security apparatus in the context of the National Security Law. This research conducted interviews with crucial Hong Kong figures such as scholars, politicians, journalists, and activists to provide a comprehensive account of the law’s ramifications. All interviewees were given the option to speak anonymously in order to speak freely, with some giving permission to use their names. The goal of this paper is to articulate the seriousness of Beijing’s encroachments on Hong Kong’s democratic autonomy and ideological independence: how “One Country Two Systems” inches closer and closer to “One Country, One System.”

Part 1: Post-Handover Hong Kong & “One Country, Two Systems”

In 1984, Communist China and Britain agreed to return Hong Kong to Chinese sovereignty after one and a half centuries of colonial rule. The agreement, the Sino-British Joint Declaration, was signed by then-Premier Zhao Ziyang of the People’s Republic of China and Prime Minister Margaret Thatcher of the United Kingdom, stipulating that Hong Kong would become a “Special Administrative Region of China under a policy commonly known as ‘One Country Two Systems.’”¹⁰ The principle is broken down into five elements:

¹⁰ Ibid.

- Hong Kong retains its “capitalist system and lifestyle” separated from the mainland’s communist system, hence the term “One Country Two Systems.”¹¹
- Hong Kong enjoys “a high degree of autonomy” from mainland China. Responsibilities associated with all aspects of Hong Kong’s rule, except for foreign and defense affairs, are vested within the government of Hong Kong.¹²
- Hong Kong will establish the “Basic Law,” the de facto constitution of the Hong Kong Special Administrative Region, outlining the systems of governance and the rights and liberties of Hong Kong citizens.¹³
- Hong Kong establishes its own “executive, legislative, and independent judicial power.”¹⁴
- “One Country, Two Systems” will “remain unchanged for 50 years,” beginning on July 1, 1997, lasting until 2047.¹⁵

It is important to point out that “One Country, Two Systems” was initially intended for Taiwan as a solution to the Chinese policy of reunification.¹⁶ Three main stages have shaped the framework and development of the system. First, there was the Third Plenary Session of the 11th CCP Central Committee in December 1978, when Beijing advocated for “the prospect of the return of our sacred territory Taiwan to the embrace of our motherland.”¹⁷ Here, we see for the first time

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Chao, Chien-Min. ““One Country, Two Systems”: A Theoretical Analysis.” *Asian Affairs* 14, no. 2 (1987): 107–24.

¹⁷ “Communique of the Third Plenary Session of the 11th Central Committee of the Communist Party of China.” *Peking Review* 52 (December 29, 1978).

the central government's stance on relations with Taiwan. Next, a statement by Ye Jianying, a leader of China's communist revolution who was then chairman of the Standing Committee of the National People's Congress, expanded in depth on the proposed reunification, including the prospect of Taiwan's status as a special administrative zone that enjoys "a high degree of autonomy."¹⁸ Key points presented in Ye's statement bore similarities to Hong Kong's current "One Country, Two Systems" policy, such as the promise that "Taiwan's current socio-economic system will remain unchanged, so will its way of life."¹⁹ At this time, the phrase "One Country Two Systems" began circulation in mainland China. The third and final prong was the publication of senior leader Deng Xiaoping's response to both international and Taiwanese concerns over China's cross-strait territorial ambitions. In the pro-Beijing *Wen Wei Po* newspaper, Deng's response provided the "theoretical framework" of "One Country, Two Systems."²⁰ Taiwan rejected and continues to reject Communist China's proposed framework offer. Thus, the system was applied to Hong Kong only by coincidence, emerging as a viable solution to the looming fate of Hong Kong's sovereignty during talks between Great Britain and China prior to the Sino-British Joint Declaration.

Hong Kong's handover to China was unique; its sovereignty was bestowed not to itself but instead to another country. Further, neither internal pressure nor international outcry brought about the end of Britain's colonial rule, but rather China deciding that the fate of Hong Kong was an internal matter.²¹ Indeed, Communist China stated that Beijing considered Hong Kong as part

¹⁸ *People's Daily*. September 30, 1981.

¹⁹ Ye, Jianying. "Ye Jianying on Taiwan's Return to Motherland and Peaceful Reunification." China Internet Information Center, September 30, 1981.

²⁰ Wei, Da-yeh. "The Formation and Development of 'One Country Two Systems'." *Wen Wei Po*, December 20, 1984.

²¹ Carroll, John M. *A Concise History of Hong Kong*. Lanham: Rowman & Littlefield, 2007.

China long before the handover. But without the prevalence of the ideologies of Marxism, socialism, Maoism, and Deng Xiaoping Thought in Hong Kong, the central government understood the need for a pragmatic approach to relations with Hong Kong. Thus, as early as the 1950s, Zhou Enlai, China's first premier, made it abundantly clear that Communists should "protect the present Hong Kong situation and status, including its English colonial economy and capitalist system."²²

By the time of the handover, National Taiwan University political scientist James Hsiung feared that the future of post-handover Hong Kong was "dismal and downright pessimistic. The worst scenario saw Beijing meddling in Hong Kong's politics and economic life, and trampling upon its freedoms, including freedom of the press, judicial freedom, academic freedom, and free elections. There would be corruption, nepotism, cronyism, and related plagues, brought in by the Mainland Chinese."²³ Fast forward to present-day Hong Kong, and many of Hsiung's admittedly pessimistic concerns are seen by observers as a harsh, inescapable reality. Such concerns, materialized in the implementation of the security law, will be discussed later against the backdrop of the volatility of "One Country, Two Systems." Although the Basic Law outlined that Hong Kong's legislative authority is derived from the Special Administrative Region itself, the CCP continues to inject itself into Hong Kong's affairs. What once was a clear distinction between Beijing and Hong Kong's roles in SAR governance has become a grey area. As seen in the analysis in this paper, several major events driven by both pro-China and pro-democracy forces have been responsible for diametrically shifting the two systems model and jeopardizing Hong Kong's

²² Yik-yi, Cindy Chu. "Overt and Covert Functions of the Hong Kong Branch of the Xinhua News Agency." Chinese Communists and Hong Kong Capitalists.

²³ Ibid.

autonomy, compelling China to counter this by implementing the security law. Key post-handover events up to the law's implementation include:

- February 2003 -- the Hong Kong Government attempts to implement the National Security Law pursuant to Article 23 of the Basic Law.
- 2012 -- Hong Kong's Education Bureau proposes the Moral and National Education Curriculum, with a significant pro-China perspective.
- 2014 -- The Umbrella Movement in response to the National People's Congress proposed electoral reforms.
- 2019 -- The 2019 Hong Kong protests in response to the Fugitive Offenders Amendment Bill that would allow extradition to Mainland China.

These events illustrate the central government's growing frustration with the Hong Kong people's resistance to the Hong Kong government. At the same time, the aftermath of each event, discussed in detail below, reveals Beijing's growing distrust of the Hong Kong government's ability to manage political resistance.

February 2003: The Basic Law and Article 23

The first test of the vulnerability of "One Country, Two Systems" came in 2003 when Beijing made clear that establishing a national security law was to become a top priority of the government of Hong Kong. Under Article 23 of the Basic Law, Hong Kong is duty-bound to establish its own national security law prohibiting acts of secession, sedition, subversion, and treason against the Chinese government.²⁴ Thus, shortly after Tung Chee-Hwa's appointment to a second term as

²⁴ Lotz, Benjamin. "Article 23 of the Hong Kong Basic Law: Whiter Media Freedom?" *Verfassung in Recht und Übersee* 45, no. 1 (2012): 56–71.

chief executive, he announced that Hong Kong would take up the issue of Article 23.²⁵ Lawmakers first submitted draft legislation to the legislature in February 2003 with the government claiming that the majority of the public supported the proposal. Research, however, suggests the contrary; independent scholars and data from the Hong Kong University's Public Opinion Programme maintain that most were against the proposed national security legislation.²⁶

Certain provisions of the proposed law, including the "police power to enter private premises to search without a court warrant" and "providing no public interest defense to protect press freedom in cases related to state secrets" gave impetus to sizable public opposition against the bill.²⁷ Pro-democracy activists staged an unprecedented protest with an estimated turnout of 500,000 people.²⁸ The 2003 protest was seen in the eyes of the Chinese government as a sign of betrayal and "that Hong Kong people's hearts haven't returned to the motherland."²⁹ Further, as a result of the protests, Tung's authority was severely diminished, leaving him with no choice but to withdraw the legislation. The protests triggered for the first time the active involvement of pro-democracy forces in the elections for chief executive and the Legislative Council, as evidenced by the creation of the Civic Party and the stunning defeat of the pro-Beijing Democratic Alliance for the Betterment of Hong Kong party in the LegCo elections.³⁰ Key members of the alliance Yeung

²⁵ Loh, Christine. "Hong Kong's Relations with China: The Future of 'One Country, Two Systems.'" *Social Research* 73, no. 1 (2006).

²⁶ "Summary of Findings." - 港大民研 HKUPOP, June 2003.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Chow, Vivienne. "China and Hong Kong: 'One Country above All'." Lowy Institute. *The Interpreter*, July 5, 2017.

³⁰ Ibid.

Yiu-Chung, Lau Kong-wah, and Ip Kwok-him all lost their elections, and the party as a whole lost 144 out of 206 city-wide elections.³¹ The 2003 protest, combined with the emergence of pro-democracy political parties and candidates, altered for the first time Hong Kong's political landscape and stirred fear within the Chinese government of the capabilities of the Hong Kong people. In response to these events, Beijing reacted with three key actions:

- An increase in the presence in Hong Kong and capacity of the People's Liberation Army and the Liaison Office.³²
- The abandonment of Beijing's "non-interventionist" approach to Hong Kong's political and legislative affairs.³³
- The establishment of the Hong Kong and Macao Affairs Work Coordination group.³⁴

All three actions paved the way for Beijing's interference in Hong Kong's political development. For example, China began to provide or withhold support for chief executive candidates publicly. In December 2004, Chinese President Hu Jintao criticized Tung in a meeting in Macau. When comparing Macao's return to China with that of Hong Kong, Hu noted, "the officials must turn back and look over the past seven years and find out what has gone wrong."³⁵ Hu's speech reflected Beijing's view of Tung as a political liability stemming from the 2003 protest. In March 2005, Tung resigned on the grounds of ill health.³⁶

³¹ Kwong, Bruce Kam-kwan. "Patron-Client Politics and Elections in Hong Kong," 2009.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Harney, Alexandra, and Justine Lau. "Hu Publicly Criticises HK's Leadership." *Financial Times*, December 20, 2004.

³⁶ "Tung Chee-Hwa Resigns as HK Chief Executive." *Tung chee-hwa resigns as HK chief executive. China Daily.*

Furthermore, this marks for the first time the central government's newfound ability to influence political parties. Through the Liaison Office, the central government can render support to pro-Beijing parties and candidates ahead of elections through trade unions and community organizations such as the Kowloon Federation of Associations and the New Territories Association of Societies, campaigning for the Democratic Alliance for the Betterment of Hong Kong party members. The events of 2003 and the subsequent reaction by the central government were early instances of Beijing exerting pressure on Hong Kong, calling into question the future of "One Country, Two Systems." As Johannes Chan, former dean of the Hong Kong University's Law School, notes, "The central government is not content with just having a veto power to disallow any political change, but wants full control to decide whether any change is proposed in the first place."³⁷

April 2012: HKSARG Introduces the Moral and National Education Bill

Since the handover, the Hong Kong government has failed to foster a Chinese national identity, spread Chinese values, and foster Chinese patriotism in the Hong Kong population. The latest available data from the Hong Kong University's Public Opinion Programme reveals that 27% of Hong Kongers identify as proud of becoming a national citizen of China, and just 11% identifying as Chinese instead of Hong Kongese.³⁸ The Chinese Communist Party believes that the lack of Chinese patriotism can be traced to a lack of national pride in Hong Kong's youth and thus has called for reforms to Hong Kong's education system. In the eyes of the central government, promoting a pro-China national education for Hong Kong's youth is critical to

³⁷ Chen, Hongyi, and Johannes Chan. *Constitutionalism in Asia in the Early Twenty-First Century*. Cambridge, United Kingdom: Cambridge University Press, 2015.

³⁸ "Identity Indices of Hong Kong People." 香港大學民意研究計劃 Public Opinion Programme, the University of Hong Kong, June 27, 2019.

diluting a Hong Kong identity that is devoid of “love for the motherland” and that emphasizes the “One Country” interpretation.³⁹ As early as 2004, the Hong Kong government worked to incorporate a pro-China curriculum into local Hong Kong schools by establishing the National Education Center that supports exchange programs to mainland China.⁴⁰

A pro-China educational curriculum garnered support from the top echelons of the central government in 2006, with endorsements from President Xi Jinping. Xi, on the 20th anniversary of the handover in 2017, said of Hong Kong’s education: “Stepping up patriotic education of the young people” as well as “enhancing education and raising public awareness of the history and culture of the Chinese nation” are crucial to forging the next generation of pro-China Hong Kongers that embrace the Chinese motherland.⁴¹

But it wasn’t until May 2011 that significant changes were proposed to Hong Kong’s educational curriculum. The Education Bureau proposed the Moral and National Education Curriculum, a reformed curriculum aimed at implementing a national education with Chinese characteristics. Key goals of the Moral and National Education Curriculum included developing a national identity and a commitment to the ideals of China. The bureau claims that the education curriculum is “an essential element of whole-person education which aims at fostering students’ positive values and attitudes through the school curriculum and the provision of diversified learning experiences.”⁴² However, the curriculum was widely criticized for its “brainwashing

³⁹ Lau, Tracy. “State Formation and Education in Hong Kong.” *Asian Survey* 53, no. 4 (2013): 728–53.

⁴⁰ Ibid.

⁴¹ “Full Text: Xi’s Speech at meeting marking HK’s 20th return anniversary, Inaugural Ceremony Of 5th-term HKSAR GOV’T.” Xinhua, 4 Nov. 2017.

⁴² “Values Education (MORAL, Civic and National Education).” Edb.gov.hk, 25 Feb. 2021.

contents,” as evidenced by the deliberate omission of the 1989 Tiananmen protests and the CCP’s crackdown on political dissidents.⁴³

Further, the curriculum describes the party as “progressive, selfless, and united,” criticizes multiparty political systems such as those of the U.S and the U.K, and is generally biased toward the “China Model.”⁴⁴ In addition to national education, the Education Bureau dramatically increased funding to the mainland exchange program. The bureau spent HK \$312 million (approximately USD 40 million) between 2012-2017 to send more than 30,000 students on exchange trips to mainland China.⁴⁵ Such trips were part of a larger attempt to establish relations between students in Hong Kong and students in China and promote pro-China learnings.

However, protests initiated by a group known as the Civil Alliance Against National Education and supported by students, parents, and teacher unions erupted in the streets in July 2012. At one point, several individuals took part in a 10-day hunger strike.⁴⁶ The Hong Kong government was left with no choice but to withdraw the bill, doing so officially September 8, 2012.

This paper argues that the central government felt and continues to feel a sense of urgency to cultivate a Chinese identity within the Hong Kong population with the looming expiration of “One Country, Two Systems” in 2047. The reintegration of Hong Kong into China will be subject to resistance if Hong Kongers continue to feel that their identity is distinct from their mainland counterparts. However, if the CCP can transform Hong Kong's youth to support the motherland

⁴³ Chen, Te-Ping. “Protest over 'Brainwashing' Schools.” *The Wall Street Journal*. Dow Jones & Company, September 2, 2012.

⁴⁴ Lin, Fen, and Sixian Lin. “Why Framing National Identity Fails: A Case Study of the Anti-Moral and National Education Movement in Hong Kong.” *SSRN Electronic Journal*, 2017.

⁴⁵ Ng, Ellie. “HK\$310m Spent over Past 5 Years on Exchange Tours to Mainland China for Hong Kong Students.” *Hong Kong Free Press HKFP*, March 31, 2020.

⁴⁶ Lau, Stuart, Amy Nip, and Adrian Wan. “Protest against National Education to End after Government Climbdown.” *South China Morning Post*, September 9, 2012.

successfully, China's continued meddling in Hong Kong's affairs will likely be less opposed. Thus, the central government feels it is crucial to inspire a nationalistic, pro-China ideology within Hong Kong's youth.

July 2014: Occupy Central With Love and Peace

In 2014, the Chinese government's Information Office released "The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region," a white paper alleging that the central government maintains "comprehensive jurisdiction" and has the "plenary power to govern Hong Kong."⁴⁷ According to the paper, "the high degree of autonomy of the HKSAR is not full autonomy, nor a decentralised power," but rather "the power to run local affairs as authorised by the central leadership."⁴⁸

Some have criticized the white paper as proof of Beijing reneging on her promises to abide by the "One Country, Two Systems" principle, as well as the broader violation of the Sino-Joint British Declaration. According to Alan Leong Kah-kit, chairman of the pro-democracy Civic Party, China's white paper "is rewriting 'One Country, Two Systems' for us" and "redefines what a high degree of autonomy is, and even go so far as to suggest that our court should be manned by judges who have this political perspective to maintain the prosperity of not only Hong Kong but the country."⁴⁹ Michael DeGolyer, political economist and fellow at Hong Kong's Civic Exchange think tank, echoed Leong's concerns. Because "the report was released in seven different languages at the same time ... this is clearly a document meant to make a case internationally to

⁴⁷ Information Office of the State Council of the People's Republic of China. "The Practice of the 'One Country Two Systems' Policy in the Hong Kong Special Administrative Region." China Internet Information Center, July 10, 2014.

⁴⁸ Ibid.

⁴⁹ Wong, Alan. "Beijing's 'White Paper' Sets Off a Firestorm in Hong Kong." *The New York Times*, June 11, 2014.

lay out a legal basis for action by the central government,” he says.⁵⁰ From Beijing's perspective, the white paper gives China a legal mandate to deploy the People's Liberation Army in Hong Kong in the event pro-democracy protests and riots spin out of control. However, such action, which as of this writing has not materialized, would be both unprecedented and extremely consequential. Shortly after the white paper's release, a survey by the Hong Kong University's Public Opinion Programme revealed that for the first time since the handover, more than half of Hong Kongers lacked confidence in “One Country, Two Systems.”⁵¹

After the central government published the white paper on the issue of the system in Hong Kong, the National People's Congress issued the “31 August Decision,” viewed by observers as another example of Beijing's staunch stance against pro-democracy forces. The Basic Law stipulates that the chief executive and Legislative Council members are elected by universal suffrage as the “ultimate aim.”⁵² At the same time, the Basic Law also stipulates that the chief executive's selection method shall be based “in light of the actual situation.”⁵³ However, the 31 August Decision unveiled a number of measures that reformed the election process of the chief executive and Legislative Council, known as LegCo. Notably, candidates for the chief executive position would now need approval from the Election Committee, Hong Kong's de-facto electoral college composed primarily of pro-Beijing loyalists appointed by the central government. Further, chief executive candidates would now be required to “love the country (China) and love Hong

⁵⁰ Ibid

⁵¹ “People's Confidence in “One Country, Two Systems”.” Hong Kong University, Public Opinion Programme.

⁵² Basic Law, art. 45 and Annex I.

⁵³ Ibid.

Kong.”⁵⁴ Critics, such as the Democratic Party and Occupy Central with Love and Peace movement, saw the 31 August Decision as a way for the central government and the Hong Kong authorities to stamp out opposition candidates from running for office.

The 31 August Decision, coupled with the white paper, set in motion a series of protests and pro-democracy activism collectively known as Occupy Central. This movement, led by legal scholar Benny Tai, was guided by three principles: “that the electoral system of Hong Kong must satisfy international standards in relation to universal suffrage; that the electoral reform proposal should be decided by means of a democratic process; and that any act of civil disobedience, though illegal, must be ‘absolutely non-violent.’”⁵⁵ Occupy Central changed the course of “One Country, Two Systems” and the relationship between Beijing and the Hong Kong government in two key ways. First, Occupy Central saw the formation of radicalized activism in the form of violence for the first time. This was in sharp contrast with the majority of previous post-handover protests that were peaceful, such as university students boycotting classes and organized sit-ins at major metropolitan venues such as airports and government offices. It is worth noting here that organizers of Occupy Central emphasized an “absolute non-violence” approach to the series of protests and sit-ins.⁵⁶ Participants had to swear allegiance to an oath promising not to resort to violence or resist law enforcement operations. Despite this, small factions of protestors clashed with police forces, resulting in the use of pepper spray, tear gas, and rubber bullets. Second, the collectivized manpower of protestors and activists that kept the Hong Kong government and Hong Kong Police

⁵⁴ Torode, Greg, and Marius Zaharia. “What Is Love? Beijing Desires Unconditional Loyalty from Hong Kong.” Reuters. Thomson Reuters, February 27, 2021.

⁵⁵ “OCLP: Manifesto.” Occupy Central with Love and Peace.

⁵⁶ Kan, Karita. “Occupy Central and Constitutional Reform in Hong Kong.” *China Perspectives* 2013, no. 3 (2013): 73–78.

Force at bay for over two months revealed to Beijing that perhaps the Hong Kong government was incapable of handling the pro-democracy movement.

Consequently, feeling pressure from Beijing that demonstrated its willingness to intervene in any threats to sovereignty, the Hong Kong government began cracking down on pro-democracy activism by disqualifying numerous LegCo candidates as well as outlawing pro-democracy and pro-independence political parties.⁵⁷ Altogether, the government responses to Occupy Central movement “bears some similarity to the widespread use of legalism in many authoritarian regimes where governments have sought to use the law to ‘suppress dissent in almost all forms while maintaining legal and political credibility.’”⁵⁸ “One Country, Two Systems” was intended for Hong Kong and mainland China to coexist despite their differences. Yet, the Hong Kong government exploiting its constitutional powers to suppress and intimidate political dissidents reflects the inevitable intertwinement of Hong Kong and China’s rule of law issue.

March 2019 -- November 2020: Anti-Extradition Law Protests

On February 12, 2019, the government of Hong Kong announced its intentions to amend what is known as the Fugitive Offenders Ordinance, marking the final straw in Beijing’s tolerance of Hong Kong’s resistance to Chinese sovereignty. The proposed amendments to the ordinance would establish bilateral extradition agreements between mainland China, Macau, Taiwan, and Hong Kong.⁵⁹ Although a 2018 murder case in Taiwan sparked the proposed amendments, many observers were quick to express deep concerns over the Hong Kong government's newfound

⁵⁷ Tsang, Emily, and Elizabeth Cheung. “Hong Kong National Party Convenor Disqualified from Running in Legislative Council Polls.” South China Morning Post, October 3, 2018.

⁵⁸ Ibid.

⁵⁹ “Legal Service Division Report on Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019.” Legislative Council, April 12, 2019.

potential to extradite individuals to Mainland China. In response, the Civil Human Rights Front organized a series of “anti-extradition” protests, known as the Anti-Extradition Law Amendment Bill protests. On June 9, an overwhelming 1 million Hong Kongers took part in the anti-extradition bill protest.⁶⁰ And despite Chief Executive Carrie Lam suspending the proposed amendments to the Fugitive Offenders Ordinance, democracy activists were still not satisfied. Over the next several months, what began as a series of protests motivated by policy change emerged into city-wide uprisings. The CCP and Xi were quick to denounce the city-wide demonstrations and riots, with Xi during the 2019 Brazil, Russia, India, China, and South Africa Conference stating that “stopping violence and controlling chaos while restoring order is currently Hong Kong’s most urgent task.”⁶¹

It is important to note that numerous acts that the security law would eventually criminalize originated during the anti-extradition protests. For example, authorities deem political mantras that protestors chant such as “Liberate Hong Kong! Revolution of our time!” a threat to Hong Kong’s national security. In the first trial verdict handed down under the law, Tong Ying-kit, a 24-year old protestor, was found guilty during a juryless trial for inciting secession and committing terrorism for riding a motorcycle into a group of police officers. Tong carried a flag on his motorcycle with the “Liberate Hong Kong” slogan. According to Esther Toh, one of the three judges appointed by Chief Executive Carrie Lam to preside over the trial, the phrase was “capable of inciting others to commit secession.”⁶²

⁶⁰ “Hong Kong Protest: ‘Nearly Two Million Join Demonstration.’” BBC News. June 17, 2019.

⁶¹ Al Jazeera. “China’s Xi: HK Violence Threatens ‘One Country, Two Systems’.” Hong Kong Protests News | Al Jazeera, November 14, 2019.

⁶² Ho, Kelly. “Activist Tong Ying-Kit Found Guilty in Hong Kong’s First National Security Trial.” Hong Kong Free Press HKFP, July 27, 2021.

However, Hong Kong Law Fellow Eric Lai of the Georgetown Center for Asian Law suggests that such interpretation creates a chilling precedent for other national security cases. “Prosecutors and judges can now take advantage of this verdict to justify charges of promoting seditious speech against citizens and activists who merely chanted or held flags bearing the same slogan,” he says.⁶³ As of this writing, Tong is the only person convicted of a crime under the National Security Law. Hundreds of other activists, protestors, and politicians have been arrested. Some have been denied bail, and others have fled into exile in other countries. In the next section, this paper takes a closer look at the implementation of the security law and its effect on “One Country, Two Systems.”

As a whole, the anti-extradition protests marked a critical juncture in Beijing’s no-nonsense approach to the issue of Hong Kong. The violence and unrest that took place over several months were unlike anything post-handover Hong Kong had experienced. At one point, a protest saw over 2 million Hong Kongers (out of 7.5 million) participating.⁶⁴ In the subsequent weeks, multiple protestors were shot with live ammunition, and a pro-Beijing lawmaker was stabbed on a street. On July 1, 2020, protestors stormed the LegCo Complex and issued a manifesto listing five demands from the government, including the withdrawal of the Fugitive Offenders Ordinance, an investigation into police misconduct, and universal suffrage.⁶⁵ Ensuing protests, such as the July 6 and 7 protests in the Tuen Mun and Kowloon districts, saw the continued escalation of police violence. The majority of protestors “had a youthful profile” and thus, multiple universities were

⁶³ Yu, Theodora. “Liberate Hong Kong? Time's up for That Slogan, Court Rules in First Security Law Trial.” *The Washington Post*. July 27, 2021.

⁶⁴ *Ibid.*

⁶⁵ Kam, Vivian. “Hong Kong Unrest Hits 6-Month Milestone, Protesters' Demands See Little Response from Government.” *CNBC*. *CNBC*, December 9, 2019.

transformed into de-facto bases for protestors, who manufactured and stored gasoline bombs, bows and arrows, and other weapons there.⁶⁶ By September 2020, public trust in the government of Hong Kong plummeted from 4.16 to 2.87 on a 0-to-10 scale, according to a survey by the Centre for Communication and Public Opinion. Furthermore, only 41.3% of Hong Kongers were confident in ‘One Country, Two Systems,’ an all-time low, the semiannual Hong Kong University’s Public Opinion Programme revealed.⁶⁷ From Beijing’s point of view, the government of Hong Kong was incapable of handling protests, riots, and civil unrest internally. The response? A national security law that would enable Beijing to directly manage Hong Kong’s national security apparatus and oppose threats to the reintegration of Hong Kong and China.

Part Two: The National Security Law and "One Country, Two Systems"

After implementing the National Security Law, Hong Kong's national security framework has two distinguishing features worthy of analysis. First, Hong Kong's national security places virtually every aspect of political, economic, and socio-cultural way of life under the eyes of Beijing. The ambiguous and wide-ranging language of the law provides Hong Kong authorities with broad authority to arrest individuals in their exercise of acts of expression and assembly under the guise of a legitimate threat to national security.⁶⁸ Secondly, the source of authority that directs and enforces Hong Kong's national security apparatus comes from the CCP. To China's totalitarian and communist rule that has repeatedly demonstrated an unwillingness to entertain challenges to its authority, even the slightest sliver of resistance can be portrayed as subversion, separatism, or

⁶⁶ Lee, Francis L.F., Samson Yuen, Gary Tang, and Edmund Cheng. “Hong Kong’s Summer of Uprising: From Anti-Extradition to Anti-Authoritarian Protests.” *The China Review* 19, no. 4 (November 2019).

⁶⁷ Ibid.

⁶⁸ Wong, Lydia, and Thomas E Kellogg. “Hong Kong's National Security Law: A Human Rights and Rule of Law Analysis.” Center for Asian Law, Georgetown Law, n.d.

even terrorism. Consequently, many individuals arrested under the law have been targeted for non-violent acts of political expression.⁶⁹ Together, Beijing and the Hong Kong government's use of the law symbolizes the final nail in the coffin of Hong Kong's autonomy.

No longer does Beijing's meddling need to occur behind the scenes. With the security law, Beijing has the legal mandate to preserve and defend its interpretation of “One Country, Two Systems” through methods previously considered illegal and a gross violation of the Sino-British Joint Declaration. This section takes a closer look at the implementation of the law and the types of crime that the Committee for Safeguarding National Security and the Office for Safeguarding National Security target. Additionally, this paper analyzes whether the individuals arrested under the law's four provisions -- secession, subversion, terrorism, and collusion with foreign forces -- pose a threat to Hong Kong's national security.

Putting aside the method of the security law's promulgation, the contents of the law pose a constitutional conundrum on the source of Hong Kong's legislative authority. The Basic Law's Article 17 stipulates that the source of legislative power in Hong Kong is derived from the Hong Kong government, not Beijing.⁷⁰ Further, Article 66 clarifies that Hong Kong's legislature is the Legislative Council, not Beijing's Standing Committee of the Communist Party or the National People's Political Consultative Conference.⁷¹ And yet, it was the Standing Committee -- China's highest ruling body -- that directly implemented the security law, bypassing Hong Kong's Legislative Council. That said, the Basic Law allows specific Mainland Chinese laws to be applied in Hong Kong as long as they are listed in Annex III of the Basic Law and “confined to those

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the Region.”⁷² Plus, Article 159 contains a series of conditions to amend the Basic Law. But a closer examination of the vast majority of individuals targeted or arrested under the law reveals that they do not pose a risk to national security when assessed through the lenses of other legal jurisdictions that value democratic ideals and thus do not jeopardize Hong Kong's ideological independence and democratic autonomy.⁷³ In fact, Annex III only covers laws about ceremonial matters such as flag displaying or matters concerning defense from foreign adversaries.⁷⁴ Thus, observers such as Michael Davis, author of *Making Hong Kong China*, make the case that “the national security law cannot override the Basic Law, as the Basic Law is the stipulated requirement of an international treaty, the Sino-British Joint Declaration.”⁷⁵ The Hong Kong and Beijing governments asserted that the security law would be applied only to severe cases, but that has not been the case. Davis describes the law as “a textbook authoritarian crackdown of the type Asian people too often have seen in other parts of the region.”⁷⁶

Key provisions of the National Security Law include:⁷⁷

- New criminal provisions targeting the crimes of secession, subversion, terrorism, and collusion with foreign forces.

⁷² Yang, Shangkun. “The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.” April 4, 1990.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Davis, Michael. “6.” Essay. In *Making Hong Kong China: The Rollback of Human Rights and the Rule of Law*. Ann Arbor: Published by the Association for Asian Studies, 2020.

⁷⁶ Ibid.

⁷⁷ “Hong Kong National Security Law: Read the Full Text.” South China Morning Post, July 24, 2020.

- The establishment of Hong Kong's own National Security Committee, supervised by the central government.
- The creation of Beijing's own national security office in Hong Kong. As of this writing, two hotels have been converted into such offices.
- The provision that Hong Kong's chief executive nominates judges to serve on national security cases.
- The provision that national security trials be held in secret without juries.

The fluid definition of national security in the context of Hong Kong's status as a city-state has proven to be a point of tension between Hong Kong and Beijing. Counterterrorism and the preservation of national security are operational priorities for the Hong Kong government and the Hong Kong Police Force. In 2018, the force established the Inter-Departmental Counter Terrorism Unit, a joint task force comprised of members from the Immigration Department, Customs and Excise Department, Correctional Services Department, Fire Services Department, and Government Flying Service.⁷⁸ The unit monitors global terrorism and counterterrorism trends to enhance Hong Kong's counterterrorism strategy and deployment methods. The unit also supports the Police Counterterrorism Response Unit, assisting Hong Kong's 18 districts with the execution of counterterrorism strategy. After the implementation of the security law, authorities established two new departments: the aforementioned Office for Safeguarding National Security and the Committee for Safeguarding National Security.⁷⁹ It would be one circumstance if the committees focused on genuine national security threats, such as foreign intelligence operations or radical

⁷⁸ "Inter-Departmental Counter-Terrorism Unit." Inter-departmental Counter-terrorism Unit | Hong Kong Police Force. Accessed August 24, 2021.

⁷⁹ "Hong Kong National Security Law Promulgated, Came into Effect June 30, 2020." Morrison & Foerster, July 1, 2020. <https://www.mofo.com/resources/insights/200701-hong-kong-national-security-law.html>.

guerilla movements. However, in the 13 months since the security law went into effect, the vast majority of individuals have been arrested for “peaceful acts of expression, association, and assembly.”⁸⁰

As of this writing, the police force’s National Security Department have arrested 145 individuals. Of the 145 arrests, only four cases would “adhere to internationally-accepted standards for national security prosecutions.”⁸¹ In the four cases, the individuals belonging to the pro-independence group “Returning Valiant” were alleged to have collaborated in a city-wide bomb plot. The individuals were found to have built makeshift laboratories containing triacetone triperoxide -- a key ingredient in explosives.⁸² However, many of the remaining cases are acts of peaceful expression and assembly, marking what could be the downfall of opposition or pro-democracy movements. One activist said that after the security law’s implementation, the crackdown of protestors and frontline journalists increased, causing a sharp decline in public protests against the Hong Kong government and Beijing. “I didn’t want to risk anything ... It [the security law] made me feel really numb,” said the activist.⁸³

Despite this, proponents of the security law maintain the argument that the law only targets threats to national security and Hong Kong’s sovereignty. Bernie Chan, a former Hong Kong deputy to the National People’s Congress and Non-official Convener of Hong Kong’s Executive Council, says the “red lines are clear” and there should be no question “you cannot break the law

⁸⁰ Ibid.

⁸¹ Wong, Lydia, and Thomas Kellogg. “New Data Show Hong Kong's National Security Arrests Follow a Pattern.” China File, August 23, 2021.

⁸² Lo, Clifford, and Victor Ting. “Hong Kong National Security Law: 3 Teenagers among 5 Arrested on Suspicion of Terrorism Offences.” South China Morning Post, n.d.

⁸³ Author interview

of the constitution of both Hong Kong and China.”⁸⁴ When asked about the 53 individuals arrested in January 2021 for participating in and organizing pro-democracy primaries, Chan noted, “it’s only illegal when you actually organize activities ... You actually follow through with actions and then you are deemed to be illegal.”⁸⁵

And though this may be the case, the event that the 53 individuals organized or participated in was a pro-democracy primary aimed at increasing the chance of pro-democracy parties holding the majority of seats in the Legislative Council. Chief Executive Carrie Lam said of the voting: “If this so-called primary election’s purpose is to achieve the ultimate goal of delivering what they called ‘35+’ (lawmakers), with the objective of objecting or resisting every policy initiative of the HKSAR government, it may fall into the category of subverting the state power – one of the four types of offences under the national security law.”⁸⁶ The primary received more than 600,000 votes, the largest primary turnout since the handover.⁸⁷ The ballot’s organizer, Benny Tai, dismissed the Hong Kong government’s threats, making the case that collaborative actions by pro-democracy candidates in the Legislative Council were squarely within the powers listed in the Basic Law. “How can a power that is recognised by the Basic Law be breaching the national security law?” Tai said after the July 2020 vote.⁸⁸

The security law’s effect on “One Country, Two Systems” has also become increasingly apparent over the past 13 months. Political scientist and Co-Director of the Education University

⁸⁴ Author interview

⁸⁵ Author interview.

⁸⁶ Davidson, Helen. “Hong Kong Primaries: China Declares pro-Democracy Polls 'Illegal'.” *The Guardian*. July 14, 2020.

⁸⁷ Lung, Natalie. “600,000 Hongkongers Voted in Unofficial Primary Election.” *Time*, July 13, 2020.

⁸⁸ *Ibid*

of Hong Kong's Centre for Governance and Citizenship Sonny Lo admits that the system is now "tilted towards (a) one country emphasis," he said in an interview.⁸⁹ At the core of this argument is the fact that several facets of the security law appear to violate the Sino-British Joint Declaration, namely Article 22 in the Basic Law as well as the erosion of an independent judicial branch. Article 22 reads: "No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own."⁹⁰ If the Chinese government needs to set up their own offices in Hong Kong, "they must obtain the consent of the government of the Region and the approval of the Central People's Government." Such consent, it appears, was never obtained. Both the Legislative Council and Carrie Lam had no say over the decisions made by the National People's Congress.

Beyond a slant towards the "one country" aspect, the law "totally restructured the nature of two systems", David Zweig, Professor and Director of the Center on China's Transnational Relations at the Hong Kong University of Science and Technology, said in an interview.⁹¹ While certain aspects of the "two systems" remain, such as a portion of Legislative Council seats voted directly by the Hong Kong people, the law as whole permits the movement towards "one country."⁹² The security law also poses a threat to Hong Kong's independent judiciary. Thomas Kellogg of the Center for Asian Law at Georgetown University identifies three ways the law chips away at judicial independence in Hong Kong. First, the law establishes that certain cases can be

⁸⁹ Author interview.

⁹⁰ China. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Hong Kong: Joint Pub. (H.K.), 1991.

⁹¹ Author interview.

⁹² Ibid.

extradited to mainland China: Articles 55 and 56 of the National Security Law state that national security cases deemed “complex” and/or “serious” are grounds for relocation from Hong Kong to China.⁹³ Kellogg notes: “Article 55 carries with it an implicit threat: deliver verdicts that are satisfactory to Beijing, or the Communist Party will simply use Article 55 to take matters into its own hands.”⁹⁴ Second, the practice of judicial review -- which has been openly practiced in post-handover Hong Kong -- is at risk. Article 14 makes clear that “(d)ecisions made by the Committee (for Safeguarding National Security) shall not be amenable to judicial review.”⁹⁵ Critics of the law raise concerns that Hong Kong’s legal system cannot truly be a common law system without judicial review. Last, the Hong Kong government has taken advantage of the security law’s loose definition of what constitutes a crime to target speech-based actions. Kellogg notes that Hong Kong’s judiciary is charged with either abandoning “the judiciary’s role as the key enforcer of the basic rights provisions in Hong Kong’s Basic Law, or face a possible high-profile clash with Beijing, one that could carry significant negative consequences for the rule of law in Hong Kong.”⁹⁶ Despite Beijing showcasing the security law as targeting a small faction of violent extremists, it’s worth noting that most of Hong Kong’s population supports the pro-democracy movement.⁹⁷ In addition, 60% of Hong Kongers are opposed to the security law, and 63% of Hong Kongers support universal suffrage independent from Beijing.⁹⁸ With the rule of law and the

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ “Exclusive: HK Survey Shows Increasing Majority Back pro-Democracy Goals, Smaller Support for Protest Movement.” Reuters. Thomson Reuters, August 30, 2020.

⁹⁸ Ibid.

freedoms of expression and assembly eroding with the security law's implementation, "One Country, Two Systems" has shifted to emphasizing the "One Country" aspect. "[A] shift back to two systems will likely happen when Xi Jinping steps down and paves the way for a successor," says Lo.⁹⁹

Conclusion

The unique and complex framework that comes with "One Country, Two Systems" makes it challenging to assess the policy's fate once it expires in 2047. No other system of governance - in the past or at present -- provides appropriate comparison or precedence. That said, the events that have unfolded since the handover, particularly the anti-extradition protests, reveal the fragility of the system where the Hong Kong government ultimately concedes to Beijing's authority. Observers frequently describe "One Country, Two Systems" on a continuum, with one end of the spectrum reflecting a Hong Kong society with full autonomy as defined in the Basic Law and the other end being Beijing introducing mainland politics into Hong Kong. As has been articulated in this paper, key events since the handover have diametrically shifted the "One Country, Two Systems" framework, peaking with the implementation of the National Security Law.

The security law's broad language targets acts of secession, subversion, terrorism, and collusion with foreign forces, but the makeup of the arrestees reveals that the law instead primarily targets acts of political expression and assembly. As a result, the governments of Hong Kong and China have faced significantly fewer challenges in the form of protests and riots, with many activists turning to self-censorship out of fear of arrest. Certainly, some of the individuals arrested under the law pose a threat to national security. But the vast majority do not. As a result, it is difficult to make the case that chanting pro-independence slogans, organizing or participating in

⁹⁹ Author interview.

democratic primary elections, and providing support to advocacy groups abroad pose a challenge to Hong Kong's sovereignty.

If Beijing maintains the belief that the future of Hong Kong requires mainland characteristics, it is not unreasonable to question the cost. Multiple foreign governments, including the United States, Canada, Great Britain, and Australia, have condemned both the Hong Kong government and the CCP for implementing the security law and subduing political opponents. Additionally, many Hong Kongers have resorted to relocating abroad, taking advantage of policies offered by foreign governments that pave paths toward citizenship. One example is over 30,000 Hong Kong residents signing up for Great Britain's British National Overseas Visa scheme.¹⁰⁰ According to the Census and Statistics Department, between June 2020 and June 2021, 89,200 residents left Hong Kong, marking the biggest decrease in Hong Kong's population in over 60 years.¹⁰¹ Although the COVID-19 pandemic has resulted in a decline in the number of foreign domestic workers, it is no coincidence that the population decline coincides with the security law and the opportunities for Hong Kongers to pursue a life abroad.¹⁰² The future of Hong Kong and "One Country, Two Systems" may be tenuous, but one thing is for sure: Beijing has demonstrated a willingness to use its powers to quash threats to its sovereignty.

¹⁰⁰ Siu, Phila, and Laura Westbrook. "More than 34,000 Hong Kongers Apply for BN(O) Visa Scheme in Its First 2 Months." *South China Morning Post*, May 28, 2021.

¹⁰¹ Gu, Vanessa. "Almost 90,000 People Left Hong Kong in the Past Year. It Marks the City's Biggest Population Decrease in 60 Years." *Insider*. *Insider*, August 13, 2021.

¹⁰² *Ibid.*

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