

RESEARCH ARTICLE

Hong Kong in the age of the PRC's alienation from the international system: In search of normative consensus

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Abstract

Hong Kong presents a test case of China's willingness to adapt Western liberal values of individual freedom and the rule of law in a corner of China. The Western model of governance, along with its common law system and capitalist economic system, has been permitted to operate side by side with the Chinese socialist system within the framework of Chinese sovereignty and the People's Republic of China's (PRC) political and legal system. The formation and implementation of the policy of 'one country, two systems' (OCTS) entail Chinese law-makers' selective integration of international and Western rules of governance into the Hong Kong and China context to serve the interests of the PRC party regime. This article explores the approaches taken by the PRC to the governance of Hong Kong in light of the regime's political and economic goals and how the Western concept of rule of law and autonomy is perceived and substantiated in terms of the communist ideology. The author argues that the intrinsic value of OCTS lies in seeking complementarity and coexistence between the Western liberal norms of governance and Chinese communist ideology, and that this intrinsic value should be upheld and remain in full force to serve as a normative consensus between China and the West.

Keywords: Hong Kong; normative consensus; One Country Two Systems; People's Republic of China; rule of law in Hong Kong; selective adaptation

I. Introduction: From the Communist Party's ideological agility to the PRC's alienation from the international system

The year 2022 marks the 40th anniversary of the first articulation of 'One Country, Two Systems' (OCTS) by Deng Xiaoping. On 11 January 1982, when meeting with a US delegation, Deng – referring to a policy statement made by Ye Jianying on the proposal of peaceful unification with Taiwan – stated, 'This is, *de facto*, the "One Country, Two Systems", and it is permissible. They do not undermine the system in Mainland, and we don't undermine their system, either' (Deng, 1994). Later in the same year, when meeting with former British Prime Minister Edward Heath, Deng Xiaoping explained in further

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detail his idea of OCTS to address the question of the future of Hong Kong and referred to the proposed new Chinese Constitution, which would permit the creation of Special Administrative Regions (SAR) with a high degree of autonomy that other local government areas of China did not enjoy (Vogel 2011b).

Maoist orthodoxy began to be repudiated in China at the beginning of Deng's economic reform of 1978, and the 1982 Constitution of the People's Republic of China (PRC) and several new laws were drafted. They were based on Chinese and international experience, including the constitutional practices of various countries – whether socialist or capitalist, European or Anglo-American (Chen 2007). For example, to attract international investment and establish a market economy, the 1982 Constitution and subsequent amendments sought to advocate the sanctity of contract and property rights. Article 18 of the 1982 Constitution permits foreign investments and encourages joint economic activities with Chinese economic entities, and guarantees that their lawful rights and interests are protected by Chinese law. Article 13 of the constitution was amended in 2004 to provide that 'Citizens' lawful private property is inviolable. The State, in accordance with law, protects the rights of citizens to private property and to its inheritance.' This ideological agility (The Economist, 2021), as featured in Deng's 'socialist market economy', preserved 'the essence of China's traditions while also utilizing foreign knowledge' (Potter 2014: 31); it may also be considered another term for 'opportunistic'. Similarly, the negotiations between China and Britain in the early 1980s to facilitate as smooth a transition as possible from the British colonial administration of Hong Kong to control by the PRC in 1997 presented another important test case for the CCP's ideological agility in terms of the willingness of the party-state to allow Western liberal values, a free-market economy and rule of law to operate in a corner of China's territory. The OCTS policy that formed the foundation of post-1997 Hong Kong envisaged that the British colonial model of government, along with its rule of law based common law legal system and the capitalist economic system, would be permitted to continue to operate side by side with the Chinese socialist system ('two systems') within the framework of China's sovereignty and political system ('one country'). The policy of OCTS, as a basic national strategy, was established to ensure the continuation of the legal, economic, social and political system of Hong Kong to avoid derogating from China's national sovereignty and political stability (Information Office of the State Council of PRC 2014).

During the early years of Deng's reform in the 1980s, with the backing of the 1982 Constitution, the negotiated settlement between China and Britain eventually came in the form of the Sino-British Joint Declaration of 1984, which contained the main principles and features of the Basic Law of Hong Kong (the Basic Law), which passed into Chinese national law in 1990 to come into effect on 1 July 1997. The Basic Law guaranteed the continuation of Hong Kong's pre-existing laws and judicial system. It declared that the socialist system and policies would not be practised in Hong Kong and that the previous capitalist system and way of life would remain unchanged for 50 years. Hong Kong was to exercise control over its economy, taxation, and land use without Chinese intervention, and the right to private property and the rights and freedoms enumerated in the International Covenant on Civil and Political Rights (ICCPR) were to be respected in Hong Kong. It is common knowledge that the OCTS policy was designed with the potential unification of China and Taiwan in mind; however, it proved to be a useful way to answer the question of the future of Hong Kong under Chinese sovereignty.

However, Deng's ideological agility seems to have been reshaped in the 'New Era of Chinese Socialism' in recent years, which arguably features themes of nationalism and

populism. China's Hong Kong policy is changing, especially against the backdrop of the changing world order and the increasing conflict between China and the West. By drawing on the selective adaptation and normative consensus literature, Part II of this article argues that the intrinsic value of OCTS lies in the complementarity and coexistence of the Western liberal norms of governance and the Chinese socialist system, which reinforce each other within the framework of Chinese sovereignty and the PRC political and legal system. Part III explores China's approaches to the implementation of the Sino-British Joint Declaration in light of the PRC's political and economic considerations. It describes how the idea of OCTS and a high degree of autonomy are perceived and substantiated in terms of the Basic Law to balance international expectations against local needs. Part IV includes a brief description of how the provisions of the National Security Law of Hong Kong (NSL) blur the distinction between Chinese and Hong Kong law and procedures and make it possible for offenders to be tried by Chinese authorities under Chinese law as China's response to the political and social unrest has revealed in Hong Kong since 2019. This legislation is a perfect example of the primacy of China's national interests, specifically those of political stability and national sovereignty, and of how the selective reception of internationally accepted constitutional legal principles can be justified as preserving the 'core interest of the nation'. In conclusion, the article argues that, despite the recent controversies over the NSL, the intrinsic value of OCTS – especially in terms of seeking complementarity and coexistence between the Western liberal norms of governance and Chinese normative discourse on the primacy of political stability and social control – should be acknowledged and the policy should remain in full force to serve as a normative consensus between China and the West.

II. Defining 'autonomy': Selective adaptation as an explanatory paradigm

Historical context of Hong Kong in the adaptation of Western liberal traditions

Before the Sino-British negotiations began in 1982, Hong Kong prospered under British administration, providing an important trade link between China and the rest of the world and supported by its common law system, with an independent judiciary operating in a rule of law-based system. Rule of law and freedom of expression are widely seen as the two most important pillars of Hong Kong law under British colonial rule (Chan 1997; Lam 2016). As Michael Ng (2022: 5) argues:

English law remains central to the history of British colonies and is still widely acknowledged by Hong Kong citizens today as a core contributing factor to the city's development and economic success. The traditional narrative ... is that English rule of law, which offers such safeguards of individual liberty as freedom of expression, is the most important legacy of British rule in Hong Kong, a legacy that is very often used to distinguish the legal and societal development of Hong Kong from that of mainland China.

Therefore, as such studies have suggested and from the author's perspective, both the rule of law and freedom of expression were the key elements of the successful governance of Hong Kong under British colonial rule before its reversion to China in 1997 (Lee 2007). The rule of law and freedom of the press are interrelated, as the rule of law offers safeguards for the freedom of expression (Ng 2017b). Furthermore, Hong Kong's traditional Chinese culture and colonial history under the British government were

combined and greatly informed the reception of Western liberal traditions of the rule of law and individual liberties (Carroll 2006). As Pitman Potter (2010: 14) argues:

Hong Kong's relations with China have repeatedly involved disputes over constitutional questions about jurisdiction, political authority, and the rule of law. Thus, China's law and policy on national integration with its peripheral areas reveal tensions around the orthodoxy of official legal culture on such questions as institutional jurisdiction and process, the role of law in policy enforcement, and legal restraints on state action. These tensions may be understood in light of international perspectives on local governance, society, and economy evident elsewhere.

In summary, the local social and cultural conditions that underlie the adaptation and development of Western liberal norms of governance in Hong Kong can be enunciated and enumerated as follows: (1) the English rule of law as exhibited in an independent judiciary that checks and balances the government and safeguards individual freedoms such as press freedom; (2) freedom of expression, which also serves as a way to check and balance the government; and (3) the strategic position of Hong Kong between China and the West (Carroll 2006; Chan 2000), as well as the combination of local, traditional Chinese culture and identity and Hong Kong's British colonial history, which makes establishing and maintaining a normative consensus between China and the West quite complicated, in light of the great influence of the PRC's political ideology and legal regime in post-1997 Hong Kong, especially the PRC's perception of the meaning and effects of Hong Kong's core values (i.e. the rule of law and autonomy), which inform the preservation and sustainability of those values. These conditions constitute the context in which we must examine China's future policy considerations towards Hong Kong, especially in light of the 2019–20 social movement and the enactment of the region's National Security Law (NSL).

Defining 'rule of law': Chinese socialist rule of law and legal instrumentalism in Hong Kong

While, from a Western perspective, the British-style rule of law is 'always regarded as the single most significant British legacy in Hong Kong' (Chan 1997), the political ideology – especially in the Xi era – features the supremacy of the party-state in the regulatory process and defines the term 'rule of law' differently, specifically as *de facto* rule by law (Ng 2019). This raises fundamental questions about how the PRC conducts its socialist rule of law (Potter 2013). This matter has been addressed by scholars, and it is relevant to any attempt to improve the way the PRC constitutional order is applied in the Hong Kong legal system (Potter 2010).

Albert Venn Dicey (1893) was the first to propose the concepts of the rule, the law and the rule of law, stating that the rule of law binds the state as well as society. Another important theory of Dicey's is his theory of parliamentary supremacy. In terms of the PRC's socialist rule of law, although there has been much debate about it, it is fair to say that it differs drastically from Dicey's initial concept of the rule of law.

The post-Mao-era legal system aimed to harmonize two fundamental goals: the party-state's monopoly on power and economic development. In the historical context of China's 1982 Constitution, particularly given the experiences of the Mao era and the Cultural Revolution, law and order were crucial to both political stability and economic

development, both of which ultimately served the ultimate goal of regime survival of the party state. This has been described as a ‘patrimonial sovereignty’ in Chinese regulatory culture, a structure in which regulators and officials are only accountable to their superiors within the government and not to the subjects of rule (Potter 2003: 124–25).

The CCP’s perception of law as a policy instrument makes the socialist rule of law a perfect example of selective adaptation. The socialist rule of law is enshrined in the Constitution through the 1999 Constitutional Amendment, which states, ‘The People’s Republic of China governs the country according to law and makes it a socialist country under rule of law’ (Constitution of PRC, Article 5). The socialist rule of law selectively adopts certain ideas underlying the Western concept of the rule of law and uses its legal terminology to articulate and enforce the orders of the party-state (Potter 2020). It differs dramatically from the Western idea of the rule of law, which ‘emanates from philosophical ideals, fear of oppressive government, and the need to limit the exercise of popular democracy’ (Killion 2005: 60). China has embraced Western ideologies, including the rule of law, to the extent that doing so facilitates the goal of economic development and the survival of the party-state regime. China’s borrowing of foreign laws continued even under Xi. For instance, in the area of contract law, a massive number of laws have been promulgated and the foreign influence is clear. In civil law, human rights are largely in socio-economic rather than political terms because the CCP feels this area may become a potential threat to its dominance. Therefore, it is safer to discuss the term ‘social rights’ other than ‘human rights’. As Randall Peerenboom (2002: 450) argues, ‘one of the main motivating forces behind China’s turn toward rule of law has been the belief that legal reforms are necessary for economic development’.

There has been extensive debate about the meaning and practical importance of the concept of the socialist rule of law in China (Bosco 2020; Castellucci 2007). According to Peerenboom (2002: 188), there are multiple types of rule of law, including the liberal democratic model, and China’s socialist rule of law is ‘theoretically compatible with a Statist Socialist or Neoauthoritarian rule of law’ (see also Bosco 2020: 188; Castellucci 2007). Moreover, in practice, ‘the Party, Party organs, and individual Party members often act in ways that are inconsistent with any form of rule of law’ (Peerenboom 2002: 188). Therefore, the fundamental feature of the socialist rule of law is the role the party plays in the legal and judicial system. This increases the effectiveness of the implementation and application of the law, which is one of the most important factors of the rule of law (Chen, Li and Otto 2021; Kuzakbirdiev 2022; Mushkat 2008; Osipov 2012).

As the state’s power is centralized and dominated by the CCP, it is argued that there is no independent judiciary in China (Peerenboom 2002: 55). The politically weak judiciary holds no power to question the constitutionality of laws, regulations, or actions of the people’s congress or the government, further disrupting the balance between the powers. The absence of judicial review of constitutionality that characterizes China’s socialist rule of law is the most significant departure from the Western concept of the rule of law, which is rooted in a system of checks and balances to which the government is bound by the law (Killion 2005: 68).

This is not the rule of law according to Dicey as applied in civil law jurisdictions in the form of principles that constrain the state (Potter 2010). Conversely, while PRC law does restrain officials, the evidence is that it only restrains officials from corruption and malfeasance. From a Western liberal standard, this is considered to be not the rule of law but instead rule *by* law. Although it may be argued as a ‘thin sense of rule of law’ (Peerenboom 2002), ultimately the core concept of the Western style rule of law is that it applies to the state as well as to society. This is rarely seen in China. The PRC’s socialist

rule of law comprises a set of rules by which governance is exercised. Although there is important value in restraining the arbitrary and corrupt behaviour of subordinate officials (Potter 2013), from a Western perspective there is no meaningful restraint of the party-state's decision-making, activities or policies, which allows the party-state to use the law to carry out its will. This is observable in the CCP's official documentation (Chinese Communist Party 2014a). It is important to recognize this phenomenon and to understand that it affects the way the West responds.

From a Western perspective, the judicial reform initiative that began shortly after the transition of power in 2012 has aimed at strengthening the party's control over the judiciary (Chinese Communist Party 2014b; Shirk 2014: 22–36). That is, the current judicial reform was introduced not to restrain but instead to enhance the political power of the state. The CCP's decision to enhance the judiciary's professionalism was based on fact that the legal system is an important policy instrument; a professional judiciary facilitates the implementation and enforcement of laws that serve the interests of the party-state. Concerning reforms designed to protect the judiciary from interference, although officials cannot interfere with the judiciary for their personal advantage, interference for political reasons is not prohibited. These reforms address judicial corruption but do not limit the dominant power of the party. Furthermore, the dominance of the CCP was strengthened in all the official documents related to judicial reform (Ahl 2019; Chinese Communist Party 2013, 2014b; Shirk 2014: 22–36; Supreme People's Court 2015), particularly the 2018 Constitutional Amendment, in which an addition to Paragraph 2 of Article 1 of the Constitution states that 'leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics'.

The socialist rule of law in China demonstrates how Western liberal norms are adapted locally. Instead of the independent institution envisaged by the Western concept of the rule of law, the Chinese judiciary is a branch of the Communist Party that facilitates the daily operation of the country. In contrast to the Western liberal model, where the protection of individual rights is the core value, in China the primary objective of the judiciary is to support the party regime in its quest for political stability and economic development; the protection of rights through adjudication is only a secondary objective (State Council Information Office of the PRC 2016).

Numerous authoritative and official documents have reaffirmed the leadership of the Chinese Communist Party (CCP) as the foundation of all legal activities in China (Chinese Communist Party 2014a); the country's regulatory culture thus emphasizes governance by a political authority that remains largely immune to challenge (Lieberthal 1995). As such, it is difficult to argue that its laws have the power to constrain the party-state. The party's leadership over the legal system was reiterated in the Fourth Plenum of the 19th CCP Congress in 2019, which extended party dominance to activities of the judiciary (Chinese Communist Party 2019). Therefore, there is clearly an orthodoxy of party dominance that affects the way the legal system operates in China. This is cause for concern in the West, particularly when the NPC decides, according to the PRC's socialist legal system principles, to push forward a legislative proposition or a certain interpretation of the Hong Kong Basic Law.

Many examples of this party dominance may be observed in the PRC, one being in the Constitution. A reference in the NPC's decision to upholding the constitutional order according to the PRC Constitution requires an examination of the four cardinal principles involving party leadership (Preface of the PRC Constitution). The conditionality principle is expressed in Article 51 of the Constitution, which states that 'citizens in exercising their freedoms may not infringe on the interests of the state'. This explains much of the

regime's orthodoxy and behaviour. Similarly, the other cardinal principles also support the orthodoxy of party supremacy, particularly its supremacy over legal activities. For the West, this orthodoxy is also manifested in the NPC's approach with regard to constitutional and political matters of the Hong Kong region.

This differential perceptions of the meaning and effects of the rule of law have informed the differing expectations between China and the West of the implementation of the OCTS (DeLisle and Lane 2004; Lee 1995; Potter 2010). There are several misconceptions in this regard.

As mentioned above, the English rule of law is traditionally perceived by Hong Kong residents and outside observers as a gift to the colonized region, a core value contributing to the good governance and prosperity of Hong Kong under British colonial rule. The English rule of law, as characterized by the principle of judicial independence, offers a safeguard of freedom of expression and other individual liberties (Ng 2016).

Today, the term 'Umbrella Movement' widely refers to the social movement that took place in Hong Kong from 2014 to 2020, before the NSL was enacted (Flowerdew 2017), but very few know much about the 'Student Umbrella Movement of 1919' that was suppressed by the British colonial government in Hong Kong in the 1920s. While it has been argued that the legal instrumentalism that characterizes the Chinese legal system generally informs the PRC's stance on Hong Kong's autonomy and rule of law through the NPC's interpretation of the Basic Law as characterized by the primacy of political stability (Potter 2010), Ng's (2017a) study suggests an identical approach by the British Empire during its colonial rule of Hong Kong, specifically the pre-eminence of political stability, with the law used as an instrument to pursue this policy objective. In this sense, the British Empire used common law and prosecution systems in Hong Kong to pursue its geopolitical interests (Ng 2017a). The British colonial government exhibited similar legal behaviour in Hong Kong's 1967 social movement and riot (Cheung 2009), such as its invocation of the Emergency Regulations Ordinance (ERO), enacted in 1922 in response to seamen's strikes (Wan 2021; Wordie 2019).

Implications and historical context

It is important to recognize the lengthy history that led to the current situation in Hong Kong, as it may contain clues about how to resolve the crisis of contemporary Hong Kong. Therefore, it is important to go beyond the protestors' political demands and focus on how certain socioeconomic forces have informed today's crisis, as these forces underpin the political discontent that arose in Hong Kong in 2019.

First, it is useful to explore how socioeconomic factors allowed the colonial government to legitimize its rule in Hong Kong and how these factors shaped political and social development in Hong Kong, leading to the present-day social and economic circumstances. The extreme political polarization and protests in the 1967 social movement reflected similar attitudes, behaviours and pent-up frustrations, and the British colonial government responded similarly to Hong Kong's 1967 social movement and the associated riots (Cheung, 2017), such as through its invocation of the Emergency Regulations Ordinance (Wordie, 2019). However, in the aftermath of the political and social turmoil of the late 1960s, the British colonial government seemed to be focused more on addressing the underlying messages than on suppressing expression. The British colonial government thus regained the legitimacy of its rule largely through social and economic

improvements to Hong Kong following the 1960s riots, leading Hong Kong to acquiesce to British rule through 1997.

A comparison of Hong Kong's 2019 social events with the political turmoil of the 1960s (Wong 2017), especially in terms of the British colonial government's improvements to socioeconomic elements and conditions in Hong Kong, reveals relevant implications. The British colonial government's social reforms in Hong Kong included the passing of an education ordinance in September 1971 that established a free and compulsory education system, a ten-year housing programme announced in 1972 to house 1.8 million people in Hong Kong, and the establishment of the Independent Commission Against Corruption (Wong 2022). These economic and social policies enhanced the legitimacy and recognition of the colonial government.

The events surrounding the 1967 riots marked a shift in Hong Kong's attitude away from mainland China in favour of the British. Before 1997, the British colonial government in Hong Kong was a political regime that did not necessarily derive its legitimacy from democratic election. The prosperity resulting from the economic and social change in Hong Kong beginning in the 1970s raises the question of whether political reforms, such as universal suffrage, might put an end to the current conflict in Hong Kong. Therefore, it is useful to consider the opinions of people expressing their discontent via the 2019 social movement, which many argue is to some extent a product of income inequality.

In Hong Kong, unaffordable real estate, mainland immigration into the city and closer political and economic ties with the mainland have been sources of concern for a large number of people since 2003. However, neither the NSL nor the political reform aimed at universal suffrage provides a solution to these underlying social and economic concerns. Furthermore, the end of British colonial rule has contributed to an identity crisis of sorts; many Hong Kong people feel a personal attachment to the British, and whether education reform is sufficient to address such feelings remains in question. Given the increasing economic integration of the Greater Bay Area, many wonder whether Hong Kong will effectively become another mainland Chinese city. Moreover, many people in Hong Kong fled China during the Civil War in the late 1940s, and during the Cultural Revolution of the 1960s and 1970s, and carry a deep dislike of the Chinese government. Such people are apprehensive about the PRC government taking over and turning Hong Kong into another mainland city.

Another concern regarding judicial independence and the rule of law is Hong Kong judges' political value judgements. Whereas some local and non-local judges in Hong Kong are criticized by Beijing for their political value judgements in cases concerning political and constitutional matters (Litton 2019), as their judgments lead to a different interpretation of the Basic Law from that of the NPC (Yang 2013), some other judges in Hong Kong are also criticized by local and Western media and other observers if they deem the judges' opinions to be politically incorrect according to Western standards (*The Diplomat* 2022). For example, Lord Robert Reed, the president of the UK Supreme Court, who serves as a non-local judge of the Court of Final Appeal (CFA) in Hong Kong, was criticized for agreeing with a CFA judgment of the court's majority on a legal question of parliamentary contempt concerning the behaviour of a member of an opposition party in the Legislative Council of Hong Kong (*The Diplomat* 2022). The morals and political values of local and foreign judges in Hong Kong are presented as a political counter-force to the Hong Kong government, and it is argued that the behaviours of some judges in Hong Kong in fact undermine the rule of law, as their judgments disregard local social, economic and political realities (Chen 2011; Yap 2007), which seriously undermines the

mutual trust between the central government and the Hong Kong judiciary (Litton 2020). As such trust is essential, a solution must be found to ensure its stability.

With regard to press freedom, the British colonial rule had a history of silencing the press in Hong Kong, including by using libel lawsuits to punish the press for criticism of the government and by 'daily mandatory vetting of Chinese newspapers by colonial censors under the office of the Secretary for Chinese Affairs and related prosecution cases'. Such behaviour indicates some degree of political instrumentalism and limitations on the British rule of law in Hong Kong during the colonial rule. In other words, laws have been used as policy instruments in Hong Kong by both Britain and the Chinese regime to achieve the policy priorities of political stability and social control to the detriment of the protection of individual rights. Another archival study reveals how the colonial administration constructed public opinion, especially through 'changing public attitudes towards the colonial government, the United Kingdom and the People's Republic of China', also known as 'covert colonialism' (Mok 2019). Such manipulation of the media also informs Beijing's perception of the effects of press freedom, where Western and local media may be used as a political tool and counter-force manipulated by governments of Western countries in a covert way.

The above discussions should encourage us to avoid Manichaeism, or drawing a dichotomy between good and evil, and between 'pro' and 'anti' forces. In the context of Hong Kong, such dualism would view Western perspectives on China's policy towards Hong Kong as being in opposition to those against the Western perspective, and similarly set in opposition the people who support and oppose various elements of the PRC initiative in Hong Kong, rather, it is crucial to view these opinions as existing on a spectrum rather than clustering them into opposing categories, which undermines a holistic understanding of the complex phenomenon that is Hong Kong.

Defining 'autonomy'

The end of British rule over Hong Kong did not occur by way of a granting of independence, as was the case for other former British colonies, but rather by the resumption of Chinese sovereignty. It is well documented that the British administration was searching for an exit strategy for the end of its lease of a large part of Hong Kong's territory in 1997, a lease obtained by the British through what China regards as 'unequal treaties'. China viewed 1997 as a watershed moment when Hong Kong would return to China. Legal and political commentaries vividly illustrate how Britain initially entertained the far-fetched idea of asserting a 'legal right' to govern Hong Kong, which was soon stepped down to an offer to administer Hong Kong on behalf of China, which China rejected outright; the British government then retreated to the idea of a negotiated settlement of the question of the future of Hong Kong (Ghai 1991; Ghai 1997: 36-37; Mushkat 1986; Wesley-Smith 1987, 1997). Chinese constitutional backing for the policy of OCTS was set forth in Article 31 of China's 1982 Constitution, which was adopted a few months after the meeting with the British delegation and empowered the NPC to create special administrative regions and to make the Basic Law (Constitution of PRC, Articles 31 and 62(14)). The main principles and features set forth in the Basic Law were included as part of the negotiated settlement in the Sino-British Joint Declaration of 1984. As such, the implementation of the Basic Law reflects the interplay between international expectations and the PRC's economic considerations and political concerns. This entailed selective adaptation of Western liberal norms of governance that can be understood as

'a coping strategy to balance local needs against the requirement for compliance with external rules' (Potter and Biuković 2011: 285).

The OCTS policy and the promise of a high degree of autonomy were manifested in the preservation of the government structure that had operated in Hong Kong with a certain degree of imperial control and interference. The Basic Law selectively adapted the previous system with certain improvements and derogations. For instance, under British rule the Governor of Hong Kong was appointed by England's monarch without any local consultation and was responsible to the British government alone. The Basic Law prescribed that his post-1997 successor, the Chief Executive of Hong Kong SAR (HKSAR), would be selected through consultation or election in Hong Kong and would be accountable to both Hong Kong and the PRC central government. Importantly, the Basic Law provided that, at a suitable time, universal franchise would be introduced to elect the chief executive and the Legislative Council, Hong Kong's legislature (Article 45 of Hong Kong Basic Law). The judicial system remained virtually the same except for the severance of the imperial link through the Privy Council, which served as Hong Kong's apex court under British rule. Hong Kong's judicial autonomy was significantly affected by the subsequent conferment on the NPC of the final power of adjudication of questions of interpretation of the Basic Law. The enactment of the NSL in July 2020 reveals the compromise that, while the common law and legislation passed in Hong Kong would remain in effect, the Basic Law granted the Chinese government the power to extend PRC national laws to Hong Kong or to enact legislation for Hong Kong, just as the British imperial government had passed legislation applicable in Hong Kong.

The Basic Law undoubtedly provided a workable system so long as Hong Kong and the central government acted in harmony and respected each other. The main expectation on the British side was that Hong Kong would continue to be autonomous and, in due course, become as close as possible to the Western world, with a Western political style featuring a chief executive and a legislative council elected by universal franchise, which would function free from Chinese interference. In contrast, China's expectation was that the OCTS formula would serve China's interest of economic development and political stability, as well as its national reunification agenda, and would not lead to Hong Kong's freedom from Chinese control or influence, which would threaten China's territorial integrity and the socialist political system through Western influence.

The careful drafting of the Basic Law, a unique constitutional document, shows that China engaged in a selective adaptation of Hong Kong's previous constitutional and legal system, which followed a Western tradition. The most distinctive feature in terms of selective adaptation may be the interpretation of the term 'high degree of autonomy' and the interpretation of the Joint Declaration in terms of the role of the British government in Hong Kong after the handover. The key feature of both the Joint Declaration and the Basic Law is the promise that Hong Kong would enjoy a 'high degree of autonomy'. The use of the term 'high degree of autonomy' to describe Hong Kong's constitutional status has given rise to conflicting expectations, particularly the two governments' perceptions of 'autonomy'.

The British see the high degree of autonomy granted to Hong Kong as an international treaty commitment resulting from the Sino-British negotiations and not to be interpreted at the whim of the Chinese government. Similarly, in a common law mindset, Hong Kong's autonomy may reasonably be expected to be comparable to Canada's autonomy under the British North America Act of 1867 (BNA). However, Hong Kong was clearly not intended to enjoy the same kind of quasi-independent status that Canada was given when it was granted Dominion status under the BNA in 1867. Article 3 of the Sino-British

Joint Declaration declares that Hong Kong shall be ‘directly under the authority’ of the Chinese central government and that Hong Kong will enjoy a high degree of autonomy, except in foreign and defence affairs which are responsibilities of the Central People’s Government’. The Chinese government sees the autonomy as granted through the enactment of the Hong Kong Basic Law, which is based on the Chinese Constitution, and not as a binding international treaty obligation under the Joint Declaration. China views the Joint Declaration as a ‘historical document’ that no longer has any ‘practical significance’, a perspective that reflects China’s aversion to international interference (Ministry of Foreign Affairs, the People’s Republic of China 2017). Instead of debating the binding force of the Joint Declaration, China classifies the declaration as a ‘historical document’ as a means to deny outside scrutiny by the British government on the current political affairs situation in Hong Kong (*The Guardian* 2017).

From a Western perspective, the term ‘autonomy’ (in Chinese, *zizhi*), as interpreted in light of its usage elsewhere in the Chinese legal system, confers limited local responsibility for self-administration. ‘The Chinese term *zizhi* simply does not connote the sense of insulation from outside authority that is conveyed in the English term ‘autonomy’, and specific provisions of the Hong Kong Basic Law on the central local relationship invite consideration and debate over the meaning of ‘local autonomy’ (Potter 2010: 143). While the promise of a high degree of autonomy (*gaodu zizhiquan*) remains significant, it also remains subject to constitutional interpretation (Potter 2010; Article 12 of the Hong Kong Basic Law).

Another controversy is over the difference in perceptions of the meaning of the OCTS policy. The OCTS formula was designed to serve China’s interests of economic development and modernization and its national reunification agenda, and to ensure that Hong Kong would not pose a threat to China’s territorial integrity and political system. At first glance, the policy appears to insulate Hong Kong from the rest of the country – much as it was before 1997. In fact, commencing from the drafting of the Basic Law, the emphasis was on the ‘two systems’, highlighting Hong Kong’s distinct non-socialist system. During the drafting of the Basic Law and from the transition period through the first years after the transition, the emphasis on the ‘two systems’ aspect of the policy highlighted the distinctive feature of Hong Kong’s political, economic and legal systems.

The clear shift in recent years to a focus on the ‘one country’ aspect reiterates the foundational role of the PRC Constitution and the Hong Kong Basic Law in jointly forming the constitutional basis and political structure of the HKSAR. A white paper published in 2014 displays the subtle shift towards a focus on the overarching interests of China, stating that ‘the most important thing to do in upholding the “one country” principle is to maintain China’s sovereignty, security and development interests, and respect the country’s fundamental system and other systems and principles’ (Information Office of the State Council of PRC 2014). The Basic Law makes it clear that it is the PRC central government’s responsibility to determine the degree of autonomy that Hong Kong will enjoy. It states that ‘the National People’s Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of [the Basic Law]’ (Ghai 1997). For the Chinese government, the principle of ‘one country’ serves as the precondition for the realization of ‘two systems’, confirming the overarching power and legitimacy of the NPC to decide constitutional issues and cases relating to Hong Kong. The local governing authority of the HKSAR is a result of a delegation of power by the central government. Therefore, ‘the relationship between central and local authority, as set forth in the Basic Law, remains a

creature of Chinese law, and therefore is subject to whatever opportunities and restrictions this may entail for future change' (Potter 2010: 143). This is especially the case for the most recent political developments in Hong Kong, including the latest efforts by the Chinese government to overhaul Hong Kong's electoral system according to the newly introduced discourse of 'democracy with Hong Kong characteristics' (Xia 2021), which holds that 'Hong Kong's governance should be firmly controlled by patriots' (*Bloomberg News* 2021; Xia 2021). The choice of the term 'characteristics' in the newly coined term 'democracy with Hong Kong characteristics' mirrors the phrasing of the well-known term 'socialism with Chinese characteristics' by the CCP during Deng's reform era. This reveals a pattern of selective adaptation in the context of contextualizing the Western term of 'liberal democracy' in Hong Kong. This paradigm of selective adaptation in light of the status of the central–local relationship, as described above by Potter, is also reflected in the enactment of the NSL in July 2020.

III. Implications of the 2019–20 social movements and the enactment of the National Security Law to sustain a normative consensus

As Pitman Potter (2010: 143) argues, 'despite the proscription against interference in local affairs, the linkage between security of Hong Kong and national policy imperatives allows the central government significant power over the interpretation of local autonomy'. Pursuant to the Basic Law, the NPC has the ultimate authority to interpret the laws in Hong Kong. This significant power grants China the discretion to limit assertions of local autonomy in the name of national sovereignty and security. This raises the following questions that are of concern to the West. What is there to prevent the Hong Kong government from likewise using the NSL to silence dissent in Hong Kong? And what is there to stop the Chinese government from using its ultimate authority to interpret the NSL to suit its political whims?

It is important to recognize that the NPC's decision to enact a national security law for Hong Kong stands against a lengthy historical context. The debate over the patriotic education policy of 2012 is an important element of this context, as well as the Umbrella Movement and the subsequent the intensity of the extradition bill protests of 2019–20. Another important aspect of Hong Kong's historical context is the pro-democracy activists' major victory in the district council elections of 2019. These all constitute expressions of political will and pent-up frustration, and the government seems more focused on suppressing expression than on taking action to address the underlying messages.

China's apprehension that Hong Kong may strive to be free from Chinese control is not new. The inclusion of Article 23 in the Basic Law is clear evidence of China's concern that Hong Kong may become a base for anti-Chinese forces:

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the Region, and to prohibit political organisations or bodies of the Region from establishing ties with foreign political organisations or bodies (2003).

The enactment of the NSL as a part of Hong Kong law was a direct response to the destructive political and social unrest of 2019 that resulted from the proposed revision of

the extradition law. The NSL also addresses Hong Kong's local legislation on national security as required by Article 23 of the Basic Law.

To implement Article 23, the Hong Kong government introduced the National Security (Legislative Provisions) Bill in 2003, but was compelled to shelve it in the face of widespread public opposition (Chen 2003). The public movement against the Bill in 2003 was calmer than more recent outcries, beginning with the 'Occupy Central' movement of 2013, largely known as a violent demonstration to demand hastened electoral reform. Demands for more independence continued unabated, eventually leading to a period of 'breakdown of law and order and escalating violence' in 2019–20. The outbreaks of violence during this time began as a powerful voice against the introduction of an extradition Bill, which was viewed as a pretext for China to facilitate extradition of Hong Kong criminal suspects for prosecution under Chinese laws (Lee et al. 2019). Soon the protest movement developed into a widespread demand for radical political changes through frequent violent and destructive protests.

It was in this context that the Chinese government passed the NSL to fill a gap in the Hong Kong legislation due to the failure of the HKSAR government to legislate in 2003 as mandated by Article 23 of the Basic Law. The purposes of the NSL are: (1) ensuring full implementation of the OCTS policy; (2) preventing, suppressing and punishing acts of secession, subversion, terrorism and collusion with foreign countries or elements to endanger national security in relation to Hong Kong; (3) maintaining the prosperity and stability of the HKSAR; and (4) protecting the lawful rights and interests of Hong Kong residents (Art. 1 of the Law).

The NSL has a special status in that common law and local legislation must yield to it (Art. 62) and the chief executive is accountable to the Chinese government for affairs relating to safeguarding national security in Hong Kong (Art. 11). The NSL introduced a special mechanism for guiding and overseeing its implementation, establishing an office located in Hong Kong and entirely staffed by Chinese national security staff (Arts. 48 and 51) as well as a committee consisting of certain principal officials of the HKSAR government, guided and advised by representatives of the Chinese government (Arts. 12, 13 and 15). These two agencies are well insulated from HKSAR government control (Arts. 60, 61 and 14).

The NSL also provides that certain categories of offences under it may be tried by Chinese authorities applying Chinese law (Art. 57). While the Hong Kong government failed to pass the extradition law, which was widely perceived as a means to subject Hong Kong residents to Chinese criminal jurisdiction, the Chinese government made extradition possible under this law. The NSL further made a significant change in the way the Hong Kong judiciary works; contrary to the common law practice, the NSL provides that prosecutions under it shall be heard by judges designated by the chief executive and that any such judge may be removed from the list of designated judges if they speak or behave in any manner endangering national security (Art. 44).

The NSL clearly emphasizes the primacy of 'one country' over 'two systems' and warns that China will not hesitate to intervene to ensure that Hong Kong threatens neither China's territorial integrity nor the overarching supremacy of Chinese central authorities. The passing and implementation of this law illustrates the theme of this article: that China is open to receiving international norms only to the extent that they support China's national endeavours and do not unsettle its socio-economic and political stability.

The most recent controversies and expressions of discontent over the NSL represent the interplay between the PRC's preoccupation with political stability and outside expectations. Since the 1980s, China's national policy has prioritized economic

development and opening to the outside world. Despite the PRC government's interest in using Hong Kong as a free economy with a well-established financial and legal infrastructure, however, the NSL demonstrates that national sovereignty and political stability are more important national concerns, which the Chinese central government will manage at any cost.

It is important to note as a matter of methodology that the responses of the PRC government and the Hong Kong Special Administrative Region government to the social movements are not always uniform. Much of the internal political culture and policies that underlie legal initiatives, whether in China or Hong Kong or elsewhere, must be 'unpacked'; it is necessary to think about legal initiatives not as the product of a monolithic government, but rather as the product of a long, dynamic and iterative process of negotiation and disagreement, much of which is hidden from view in the PRC context.

From a Western perspective, the NSL is a clear intrusion by the PRC government into law-making in Hong Kong. The PRC's decision to enact the NSL clearly expresses that it will draft laws and include them as an annex to the Basic Law. This calls into question any different outcome that may have been imagined for Hong Kong. Although the NSL may be a 'one-off' prompted by alarm over social unrest, it is still perceived by Western observers as a clear erosion of the separation of Hong Kong law from PRC law (Chau 2022; Hagiwara 2022; Lai 2023).

To determine how the law will be interpreted, it is worth looking to the legal precedents that NPC deputies and delegates have at their disposal. Given the makeup of the NPC Legal Affairs Committee and other relevant authorities, they may be expected to refer to PRC legislative history, the normative origins of national security, secession, subversion, and so on. The NPC's decision to enact the NSL clearly states that the PRC approaches the socialist rule of law as conferred by constitutional order language.

Although Hong Kong's legal system plays a role in the application of the NPC's terms of a constitutional matter, national security is another matter. Article 2 of the NSL defines 'national security' as the relative absence of international or domestic threats to the state's power, government, sovereignty, unity, territorial integrity, welfare of the people, sustainable economic and social development, other major national interests and the ability of the state to ensure continued state of security.

China's Anti-Secession Law with regard to Taiwan (Anti-Secession Law of the People's Republic of China), which addresses preserving China's sovereign and territorial integrity and safeguarding the fundamental interests of the Chinese nation, is relevant to any discussion of separatism. The NSL addresses separatism in light of national sovereignty, unity and territorial integrity.

The proposed Article 23 Security Ordinance did not pass, but nonetheless contains language that may influence interpretations of the NSL. Specifically, the proposed amendment to the Hong Kong Crimes Ordinance Section 2(b) states that a person commits secession if he withdraws or uses force or seriously criminal means that endanger territorial integrity.

Therefore, the possibility of a broad interpretation of the separatist language of the NSL is highly likely, especially given the party dominance orthodoxy present in China. The Criminal Law of the PRC in Article 13 addresses subversion of state power, referring to an act that endangers the sovereignty, territorial integrity and security of the state. Moreover, Article 105 of the Criminal Law states that whoever incites others by spreading rumours or slander or any other means to subvert state power is considered to attempt to overthrow the social system. From a Western perspective, the vagueness of the language coupled with the dominance of the party policy renders the interpretation of the law a

source of concern. The NFL describes ‘subversion’ as anything that disestablishes the basic system of the PRC – specifically the four basic principles, that means party leadership, Maoist orthodoxy, the Socialist Road, and People’s Democratic Dictatorship – overthrows the central government or intimidates the Central People’s Government by force or serious criminal means. This language must be interpreted by judges and officials, so the interpretation will be dominated by the party and its objectives, raising significant concerns about how this law may be imposed or may be interpreted in Hong Kong.

There are similar concerns regarding terrorism, in terms of both the UN Standard on Terrorism, which has been adapted in Hong Kong, and China’s 2019 Anti-Terrorism Law, which refers to actions that create social panic or endanger public safety. Such descriptions invite discussions and debates as to the meaning of ‘public safety’, as this term can be interpreted in many ways. Western observers, examining the underlying principles, cannot ignore the significant role of party orthodoxy in the legal system.

Although it is customary for international scholars and officials to downplay overseas interference, it is important that China preserves its sovereignty with great vigilance. The country has expressed opposition to certain foreign behaviour and perhaps assumes a greater level of coordination between foreign nations. For example, in the context of the 2019–20 extradition protests, China protested the ‘black hand’ and ‘foreign involvement’, referring to foreign government, media and NGOs (*Bloomberg News* 2019).

From a Western perspective, the NSL boils down to China’s lack of confidence in the rule of law, which binds the state just as it binds its citizens, and a preference for the socialist rule of law, which exempts the party by definition. As such, the Western world has reacted strongly to the uncertainty raised by the NSL.

It is fair to assert that, in the context of central local relations between China and Hong Kong SAR, ‘national security’ refers to the pursuit of political stability and public safety rather than the narrower sense of intelligence, surveillance and terrorism, which is observed in the legislation of Western countries. Political stability tends to be prioritized over economic considerations, echoing Adam Smith’s (1999) argument in *The Wealth of Nations* that there is only one justifiable exception to free trade, which is in the interest of national security. The NSL raises questions concerning China’s stance on international human rights standards in terms of its efforts to strike a balance between protecting human rights and preserving political stability. According to the Joint Declaration, the provisions of the ICCPR as applied in Hong Kong remain in force, with certain limitations. Therefore, as Vogel (2011a: 507) states, ‘China would still allow people in Hong Kong to criticize the Communist Party but if they should turn their words into action, opposing the mainland under the pretext of democracy, then Beijing would have to intervene.’ The perception and interpretation of the meaning of autonomy in Hong Kong is informed by the core interests of the Chinese central government. This coincides with Potter’s (2010: 146–47) argument:

Against a backdrop of legal instrumentalism that ensures interpretations of text that satisfy the policy imperatives of the central Party/state, orthodox perspectives on the reach and potential for autonomy in Hong Kong remain limited, as preoccupation with national sovereignty has tended to dominate official discourses on the one country–two systems constitutional model.

For China’s policy towards Hong Kong, international considerations involve not only treaties but also China’s international policies. When China debated whether a national security law made by the NPC would be desirable, it must have taken into account such

considerations as socio-economic, political and legal matters and consequences, as well as potential reactions from Western countries. When the PRC government eventually decided to address political and social unrest in Hong Kong through the NSL, it revealed that it was prepared to forcefully meet international opposition.

More than a year after the NSL was enacted, it was clear that the NSL had virtually no significant impact on the daily lives of average Hong Kong residents. However, Western observers may still argue that the effects of constraining freedom of expression occur gradually over time. Specifically, the NSL's expansive interpretation of 'national security' and the expansive definition of 'state secrets' provided in the Chinese State Secrets Law raise questions concerning the legal effects of criticizing a leader, including whether such an act may be classified as subversion or incitement rather than mere freedom of expression. This is of critical importance when certain cases involving the NSL are investigated and being tried in the courts in mainland China instead of falling within the jurisdiction of Hong Kong courts. As no such cases have yet been raised, the implications of the emergence of two parallel judicial systems remain to be seen. However, there is no question that the emergence of two parallel judicial systems will present a great challenge to the implementation of the rule of law in Hong Kong because party supremacy is the defining characteristic of the Chinese socialist rule of law (Wong and Kellogg 2021). This touches on how the rule of law affects the legal process, raising questions concerning the possibility of objective interpretation of NSL provisions and the predictability of the law. China's ability to address such substantive issues, as well as procedural issues, justly and fairly comes down to the rule of law.

From the Western perspective on freedom of expression, it is not in the best interests of the state to constrain opinions, as people have limited information and bounded rationality; thus, the more people who are involved in thought and discussion, the better. Free expression thus aids the state in ensuring the prosperity, safety and security of its people. To reserve the decisions involved in those duties to an unaccountable and relatively small group of people is ultimately harmful to the state, as it deprives the state of a variety of ideas that could enable it to respond effectively to the crises we face today and will continue to face in the future.

Implications of the reversionary character of the current Hong Kong political-legal system

Impact on political participation

The enactment of the NSL is widely viewed as the PRC's most notable response to the 2019–20 social movement, as it undermined both the rule of law and the freedom of expression – at least from a Western perspective. The NPC's Decision on Improving the Electoral System of the HKSAR is another important legal document that represents the PRC's changing stance on the OCTS featured in the Joint Declaration and the BL. At the end of 1989, in Hong Kong's transitional period, China agreed to gradually promote democratization in Hong Kong by allowing half of the Legislative Council's 60 seats to be directly elected by 2007, and this promise was reaffirmed in Annex II of the BL, promulgated in 1990 (Cradock 1995). After the handover, this goal was achieved in 2004. However, the NPC's 2021 Decision on Improving the Electoral System of the HKSAR reduced the number of directly elected seats from 30 out of 60 to 20 out of 90. This is argued to be a clear erosion of political participation in Hong Kong (Young 2021).

Broad and deep penetration of the social fabric

In the estimation of the author, an extremely important but subtle impact of the current political-legal system following the enactment of the NSL is the Hong Kong people's gradually changing perception of the value of the Western liberal traditions of the rule of law and freedom of expression. The current political-legal system, coupled with the rise of nationalist perspectives in education, may invite discussions about how to coordinate nationalism with global citizenship education.

IV. Intrinsic values of One Country Two Systems: Coexistence of conflicting ideologies

The date 1 July 2021 marked both the 24th anniversary of Hong Kong's return to China and the 100th anniversary of the founding of China's ruling Communist Party. An article published in *The Economist* (2021) argues that an important reason for the party's longevity is its 'ideological agility'. Whereas the PRC's political normative discourse during the Mao era, from 1949 to 1978, was preoccupied with national sovereignty and class struggle, and was based on communist ideology, the post-Mao era party ideology has established the primacy of economic development and political stability, and thus marks a significant shift towards pragmatism. The CCP's ideological agility in the post-Mao era can be traced back to 1978, when Deng Xiaoping began his reform and looked to the West for answers within certain ideological limits; this was soon after the death of Mao Zedong and the end of the Cultural Revolution (Peerenboom 2002: 55). Emphasizing that the major problem confronting China was not class struggle but a lack of economic growth, Deng shifted China's policy focus to 'reform and openness', referring to the changing of the existing political and economic system by learning from the West and participating in the international economic system. 'Reform and Opening Up' is prescribed in the Constitution as a fundamental principle of the country that serves the ultimate political agenda of maintaining party dominance; this principle significantly reshaped the economic and political landscape of China and the world (Vogel 2011a: 450). However, it is now doubtful whether the ideological agility of the CCP of Deng's era endures in Xi's new era. China's Hong Kong policy is changing, especially given the backdrop of the changing world order. Xi Jinping's 'New Era of Chinese Socialism' favours themes of nationalism and populism, as well as the increasing conflict between China and the Western world, especially as China experiences exclusion from the Western world and hostility from the United States in particular, making it difficult to reconcile the situation in Hong Kong. The current position of Chinese leadership suggests that it is unlikely to ease its policy towards Hong Kong by discussing a softer version of the NSL or local legislation on national security for Hong Kong, such as involving an institution akin to the South African Truth and Reconciliation Commission coupled with suspended sentences rather than penalties imposed on protesters – especially young people – even though this approach may be more conducive to long-term socio-political stability. This is evidenced by the leadership's advocacy of 'throw[ing] away illusions and fight[ing] bravely' ('丢掉幻想、勇于斗争') because 'the current world has undergone major changes that have not been seen in a century. The risks and challenges we face have increased significantly. It is unrealistic to always want to live a peaceful life and not want to fight. It is a matter of principle' (Wang 2019b).

The PRC's alienation from the international system is also evidenced in China's response to COVID-19 as well as the country's 'Dual Circulation Strategy' economic policy, which seeks to balance 'emphases on both internationalization and self-

sufficiency' and to focus less on the global supply chain and economic integration (Blanchette and Polk 2020). Both the country's COVID-19 response and the Dual Circulation Strategy indicate China's distancing from international norms and increasing independence. Such distancing affects China's engagement with the international community and influences global perceptions of China's Hong Kong-related policies and attitudes. Therefore, it is important to consider this context when discussing the search for a normative consensus between China and the West in terms of the current unrest in Hong Kong.

From Beijing's perspective, Hong Kong's problems reflect the historical influences of imperialism and internationalization, characterized by greater integration into the global political economy compared with the Chinese mainland (Potter 2010: 146–47). The typology of the OCTS model as applied to Hong Kong and Macao was also used to inform China's proposals for unification with Taiwan, although it is now unclear whether China still perceives peaceful reunification as a feasible approach.

The policy of OCTS was positioned by the Chinese government as a 'basic national strategy' formed according to the pragmatic consideration of balancing economic development, political stability and national sovereignty. This national strategy of the PRC in the post-Mao era aimed at harmonizing two fundamental goals: the CCP's monopoly of power and economic development (Potter 2010: 146–47). The party-state articulates economic and social changes in terms of the market economy and private business sectors and political developments in terms of the socialist rule of law and human rights protection, while retaining the political legitimacy of socialism. The official affirmation of Deng's 'socialism with Chinese characteristics' enabled China to borrow Western liberal and capitalist methods while remaining true to certain core principles of communist and socialist political ideologies (Chen 2007).

The policy of OCTS reflects a pragmatic approach to coordinating the policy priority of economic development and protecting state sovereignty and territorial integrity in addressing historical problems. From the perspective of the PRC's political ideology, all three 'unequal treaties' signed between China and Britain a century ago were invalid and China's sovereignty – including the notion that Hong Kong is a part of China – is not subject to negotiation. However, the continuation of Hong Kong's capitalist economic and social systems over 50 years cannot be considered an interim measure. Deng's focus in terms of Hong Kong concerned not only the resumption of sovereignty, but also how Hong Kong might serve China's interests in economic development and its modernization agenda (Vogel 2011b). Again, economic pragmatism served as the form of ideological agility. According to Vogel (2011b):

Deng realized that China could benefit greatly from Hong Kong's assistance in the areas of finance, technology, and management, and that China would want Hong Kong to remain prosperous even after it resumed sovereignty ... Throughout the Cold War from 1949 to 1978, Hong Kong had been China's most important window to the world ... Beijing used Hong Kong as a place to earn foreign currency, import technology, and gain information about the world ... In essence, Beijing chose to 'keep a long-term perspective and make full use of Hong Kong'.

The economic importance of Hong Kong is now declining due to the increasing economic importance of mainland China, and it is arguable that this consideration contributed to the recent changing political and legal order in Hong Kong. However, the idea of OCTS set forth in Article 31 of the 1982 Constitution concerns not only how Hong Kong might

serve China's interests in economic development but also how Hong Kong, as an experiment, should operate its system of governance. Hong Kong is characterized by a sound rule of law, press freedom and a partially directly elected legislature to check and balance the government; as such, if it is successful under the constitutional framework of OCTS, it may provide an example of political reform for other places in China to adopt in the future. If it is successful, it may become a paradigm of the selective adaptation of Western liberal norms of governance in China.

The PRC's engagement with the international system and compliance with international law are further clear examples of the party-state's ideological agility in balancing economic considerations and political stability. Economic pragmatism is essential in China's participation in the international system, as is well illustrated by China's accession to the WTO in 2001 and the country's integration into the international community (Branstetter and Lardy 2008). China's WTO membership is aimed at giving the country 'extra leverage to force through difficult changes in the domestic economic system' (Clarke 2003; Wang 2019a), and it prompted China's engagement with international standards of governance in pursuance of the party-state's policy goal towards economic development (Potter 2014: 22; Wang 2014, 2016). The WTO is commonly seen as being built on the norms of liberalism, marked by Western liberal traditions and the principles of transparency, rule of law and non-discrimination (Branstetter and Lardy 2008). This also suggests the intrinsic value of OCTS, namely that the Western liberal norms of governance may coexist with the Chinese socialist system, the two of them reinforcing each other within the framework of PRC national sovereignty and political and legal systems.

This was described by Potter (2006: 465) as the complementarity between local and international norms and values, which 'describes a circumstance by which apparently contradictory phenomena can be combined in ways that preserve essential characteristics of each component and yet allow for them to operate together in a mutually reinforcing and effective manner'. Complementarity suggests that normative and ideological conflicts should not be exaggerated or exemplified in the context of China's engagement with the international rules of governance. Even in cultures where conflicting values clash with each other, divergent values may suggest a level of convergence while keeping a degree of diversity over the course of historical evolution. In the early years of the PRC, China felt that the international legal order had been created 'without China's participation and expressed normative positions that conflicted with China's historical conditions and interests' (Potter 2006: 469). However, the great effort and deep involvement of a Chinese diplomat and philosopher in the drafting of the Universal Declaration of Human Rights (UDHR) allowed the text and principles of the UDHR to be influenced by Chinese Confucian ethics, resulting in what can be regarded as a truly universal human rights document (Roth 2018). Furthermore, the 'Jesuit Accommodation' served as a 'Jesuit attempt of accommodating Western learning to the Chinese cultural scene, in order to achieve a sort of Confucian-Christian synthesis which they considered useful to the spread of Christianity in China' (Corradini 1990: 324; see also Mungello 1989), and French Enlightenment thinkers, including Voltaire, were also influenced by Jesuit writings on Chinese Confucianism (Frainais-Maitre 2013).

V. Conclusion: OCTS Remains as a Normative Consensus

Generally, the circumstances in Hong Kong reflect continued tensions between Beijing's perspectives on national integration and local concerns of autonomy. Considering the

historical, social and economic conditions in Hong Kong, the underlying tension between liberal and socialist approaches to law and governance suggests that mutual accommodation will be a complex and difficult process (Potter 2010: 146–47). The enactment of the NSL and the NPC's 'Decision to Improve the Electoral System of Hong Kong' reveals the dominance of a constitutional arrangement dependent on interpretation by the central government with the primacy of national sovereignty and security imperatives.

As partly featured in the Joint Declaration, the Basic Law combines Western liberal norms of governance with the normative discourse and political ideology of the PRC. In the case of Hong Kong, the paradigm of selective adaptation concerns the content and the effect of international norms of governance as perceived by the PRC central government and the local authority of Hong Kong. Western liberal norms of governance have been selectively adapted by the PRC according to whether they conflict with the PRC's official normative discourse as set out in the Basic Law. Selective adaptation thus helps us to discern the PRC's interpretation of Western liberal norms of governance and to understand its adaptation of these norms in Hong Kong. The PRC's compliance with the Joint Declaration and international human rights treaties also involves these documents' interaction with local norms, including the Chinese political ideology and normative discourse that underlie the Basic Law (Potter 2014; Wang 2015). The policy of OCTS is used as a pragmatic approach to facilitate the PRC's primary political agenda of state sovereignty, national reunification and economic development, while maintaining the political stability of the party-state and meeting outside expectations for treaty compliance, especially in terms of human rights protection.

The explanatory paradigm of selective adaptation provides a unique perspective on how Western liberal traditions are contextualized in Hong Kong and how the normative discourse of the PRC leads to different perceptions of the norms and values underpinning international liberal rules of governance (Potter and Biuković 2011). The differences between China and the West in terms of their respective perceptions of and expectations regarding 'autonomy' and the OCTS policy suggest the importance of a normative consensus in that 'the sharing of international practice rules does not necessarily indicate consensus on the normative order underlying those rules' (Biuković 2007). Despite the current political and social unrest in Hong Kong, the intrinsic value of Deng Xiaoping's concept of OCTS, namely that Western liberal norms of governance can coexist with the Chinese socialist system and that they can reinforce with each other within the framework of Chinese sovereignty and its political and legal systems, should be acknowledged and the policy should remain in full force to serve as a normative consensus between China and the West. In fact, the discourse promoted by Chinese officials that 'Hong Kong's governance should be firmly controlled by patriots' was originally raised by Deng Xiaoping in a remark to a delegation from Hong Kong in 1984 (Deng 1994; Xia 2021). This supports the notion that the current PRC party regime should continue to refer to Deng's original discourse on OCTS to establish the legitimacy of its new policy towards Hong Kong.

This article uses the concept of ideological agility and selective adaptation to explain PRC legal behaviour in relation to Hong Kong without taking a normative position as to whether that behaviour is desirable or not. Rather than a normative paradigm that suggests a prescribed or desirable outcome, ideological agility and selective adaptation as an explanatory paradigm furthers understanding of a particular phenomenon, and in this case as applied to the PRC legal behaviour towards the issue of Hong Kong. While the author's view on the intrinsic value of OCTS as a normative consensus between Western liberal norms and communist ideology could potentially be interpreted as endorsing the

primacy of ‘one country’ over ‘two systems’, this article merely raises it as a possibility for the future of Hong Kong without taking a position about whether it is good or bad.

It is useful to look at China–Hong Kong relations in the historical context of China’s central–local relations, a lengthy history marked by frustration and changing national priorities. A possible trend towards centralization may be observed in the case of Hong Kong; however, this is a policy issue that has gone back and forth. As mentioned above, the OCTS policy concerns not only how Hong Kong might serve China’s interests in economic development, but also how Hong Kong as an experiment zone should operate its system of governance. Characterized by a sound rule of law, press freedom and a partially directly elected legislature to check and balance the government, Hong Kong, if successful under the constitutional framework of OCTS, may serve as an example of political reform to be used in other regions by China in the future. Going forward, if Hong Kong is used to test a certain model that proves to be successful, this model could be moulded into national policy, informing a constitutional provision to dispense autonomy in the future. Therefore, the space between the central government and regional governments is an important area of constitutional deliberation that may be fruitful in forming the future of OCTS. This coincides with the views of Pitman Potter (2010: 181), who argues:

International engagement with China and ongoing policy reform within China will remain key realities of international law and politics for the twenty-first century. Understanding of PRC law, policy, and practice of governance in Hong Kong will be an integral part of this effort ... one might hope as well that China’s law and policy on governance in Hong Kong might become something more than simply an instrument of control.

If successful, the Hong Kong experiment could become a paradigm of selective adaptation of Western liberal norms of governance in China. However, the mutual distrust between China and the West, especially in terms of China’s perceptions of the intentions of the United States and other Western countries to incite the overthrowing of the Chinese government and the subversion of state power in Hong Kong, makes this scenario quite unlikely. Nonetheless, even if Western rules of governance – especially in terms of the rule of law and human rights protection – may not find a place in China due to the party-state’s reluctance to reform the country’s political and judicial system, this does not mean that nothing can be done to improve China’s rules of governance short of a complete political and judicial reform. From a technical perspective, it is possible for international standards and rules to be applied to economies other than liberal democracies. Hong Kong was never a liberal democracy, even when it was under British colonial rule.

In light of China’s increased participation in an ever-widening range of bilateral and multilateral political, socio-cultural and economic relationships with direct relevance to Hong Kong, understanding China’s approach to governance in Hong Kong is increasingly important (Potter 2010: 146–47). The Hong Kong constitutional order is now under substantial pressure and undergoing fundamental change (Hamlett 2022a, 2022b), and it is important to recognize the complexity and fluidity of the situation in Hong Kong, given that it may mean the synthesis that the author envisages may prove to be elusive or even unfeasible. In the meantime, hope springs eternal, and we always hope for the best that it might still be possible for the international community to engage with China and influence it to be more liberalized through international cooperation and dialogue. It may be useful to explore a pragmatic, problem-solving approach to Hong Kong’s

governance and the PRC, with a focus on identifying specific problems and how they can be solved in cooperation with China without advancing a particular political agenda based on broad presumptions of ideology. This is not to discount ideology, but rather to propose that a liberal form of governance is desirable and that it may be pursued pragmatically. We may similarly seek a normative consensus to address various other problems and to influence them incrementally. This pragmatic approach may coincide with Samuel Huntington (1967), who argued that ‘the most important political distinction among countries concerns not their form of government but their degree of government’.

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