

# National Commentaries

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## A View from Hong Kong

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Protestors demonstrate in front of the British Consulate-General in Hong Kong, China September 1, 2019. REUTERS/Danish Siddiqui - RC1A01087F70

Both the Chief Executive (CE) of Hong Kong, Carrie Lam, and Zhang Xiaoming, the head of the Hong Kong and Macao Office under the Chinese State Council in Beijing, recently denounced the protests currently underway by arguing that they threaten the “one country, two systems” policy. That concept was first raised by Deng Xiaoping as a strategy to incorporate an open political and economic system, specifically Taiwan, into the Mainland’s “communist” system, all the while

leaving the former's liberal environment in place. But, in truth, the government in Beijing and the CEs it selected for Hong Kong have severely undermined this policy and destabilized Hong Kong's political, social, and economic system. The policies instituted by the Hong Kong government (HKG), the rulings and articulated positions taken by the Standing Committee of the National People's Congress (SCNPC) in Beijing (which is the highest legal authority determining Hong Kong's laws), as well as other decisions taken by top leaders in Beijing, show that they, and not the youth who are fighting to keep Hong Kong a relatively open political and social system for the next 28 years, are largely responsible for eroding the "one country, two system" system.

The current violence is an escalation in the tactics used by Hong Kongers to maintain Hong Kong's legal, political, educational, and social "system" as it was in 1997, at the time the British handed Hong Kong over to China, and an effort to draw their own red line against further encroachment on their freedoms by Beijing. To best understand the ongoing struggle in Hong Kong, one must look at the "one country, two systems" concept not as two alternative systems but rather as a continuum running from "two systems," reflecting the socio-economic, legal, and political institutions that existed in Hong Kong in 1997, to "one country," where Hong Kong's institutions would closely mirror those on the Mainland.

According to the Basic Law, Hong Kong's constitution, the legal, political, and economic institutions governing the territory were not to change for 50 years. But beginning in 2003, and then escalating after 2012, China has tried to turn Hong Kong into a hybrid political system which takes on more attributes of the system on the Mainland. Hong Kongers have resisted these efforts through large marches, civil disobedience, and most recently a violent backlash against the HKG. Moreover, each time Beijing and the HKG have tried to tighten control, they have misplayed their hand, increasing the anger and frustration of the Hong Kong population. To this extent, one must see Beijing's and the Hong Kong CE's clumsy efforts to rebalance "one country, two systems" as a major source of the current policy failure.

### *Legal and constitutional changes*

In 2003, then CE of Hong Kong C. H. Tung decided to enact Article 23 of the Basic Law. Under that article, Hong Kong was to draft a new National Security Law, drawn largely from existing British laws but with the addition of four criminal offenses—sedition, treason, secession, and subversion. These offenses were not widely used in British Common Law but reflected the civil code used in the Mainland and the perception, might one say paranoia, that outside forces would be trying to subvert China's sovereignty over Hong Kong.

The first draft of the law, which was circulated for comment during the consultation process, was much more draconian than what people (or the Basic Law) had anticipated, leading to widespread hostility. Still, the HKG appeared committed to introducing this policy. So, on July 1, 2003, 500,000 Hong Kongers protested in the streets, and eventually the bill was shelved. But the mistrust had been sown, and Tung and Regina Ip, the secretary of security, were both forced to resign. By the fall of 2003, public confidence in the HKG had reached a nadir of 16 percent from a high of 73 percent in February 1997.<sup>1</sup>

Another shift in “one country, two systems” occurred in June 2014, when China's White Paper on Hong Kong asserted that Beijing had “comprehensive authority” over Hong Kong. The document cautioned Hong Kongers that the “one country, two systems” structure existed at the good will of Beijing, striking at the heart of the Sino-British Joint Declaration and the Basic Law, as well as the dominant perception in Hong Kong that Beijing was legally bound by the Joint Declaration, an international treaty registered by the PRC and the UK on 16 June 1985 with the United Nations, under which China promised to maintain Hong Kong's “capitalist system and way of life,” “high degree of autonomy,” and “two systems” for 50 years, and that Britain, as a cosignatory to the Joint Declaration, had an obligation (and the right) to press Hong Kong's case with China. In the Joint Declaration and the Basic Law, China also pledges that “the socialist system and socialist practices shall not be practiced in Hong Kong.” Instead, the 2014 White Paper argued that

Hong Kong's "high degree of autonomy" was granted only at the bequest of the central government and the SC-NPC could limit Hong Kong's autonomy as it saw fit.

Similarly, in 2015, the kidnapping in Hong Kong by Mainland security agents of a publisher, who was selling books which presented negative views of Chinese leaders in particular Xi Jinping, and his forced transfer to the Mainland traumatized Hong Kong, as it showed that China's police do not recognize Hong Kong's "second" system, which functions under the "rule of law." Worse, when the publisher confessed his guilt on Mainland television, reminding Hong Kongers of the Stalinist trials of the 1930s, their hostility towards the "communist system" to the north intensified.

### *Re-educating the youth of Hong Kong*

The Chinese government believes that if young people in Hong Kong received a more positive picture of China's historic reemergence as a great power they would identify more with the Chinese nation, be more sympathetic to China's concerns with national security, sovereignty, and foreign interference and, therefore, more willingly shift towards "one country." To remedy this lacuna in national identity, the HKG in 2012 proposed a "National Education" Law, whereby civics courses in Hong Kong's high schools would present a more patriotic view of the Chinese "system." But many young Hong Kongers, particularly high school students, saw the CCP's narrative on Chinese history as propaganda and "brain washing." In response, at least 90,000 citizens marched, hundreds staged a sit-in outside Legco and some engaged in a hunger strike, reminiscent of Tiananmen Square in 1989.<sup>2</sup> Much of the resistance was triggered by a course proposed by a leftist Hong Kong academic, which was one-sided, pro-CCP, and anti-capitalist. Under this pressure, the HKG pulled the law, but this struggle brought a new generation of activists into the political system composed of high school seniors, who would become leaders of the "Umbrella movement" two years later.

### *Hong Kong “identity” and “one country, two systems”*

Hong Kongers resist Beijing’s efforts to move Hong Kong’s system closer to “one country” because few Hong Kong people see themselves as “Chinese.” A survey in December 2016 showed that 65 percent of Hong Kongers saw themselves as “Hong Kongers” (35%) or “Hong Kongers in China” (30%), while only 19 percent saw themselves as “Chinese in Hong Kong” and only 18 percent as “Chinese.”<sup>3</sup> In June 2017 the same research center found that only 3.1 percent of Hong Kongers under 30 felt that they were “Chinese,” a 20-year low.

Critics of these surveys argue that many Hong Kongers are proud of being ethnically Chinese and of the PRC’s economic and even military modernization, a factor that might be ignored because survey respondents may interpret the concept of “Chinese” in this survey as closely related to support for “Communist Chinese,” which garners only limited support. However, Hong Kongers in 2013 related much more to the outside world than they did to their Chinese identity.<sup>4</sup> This is not surprising, since 27 percent of Hong Kongers under age 50 have lived overseas for at least one year. Thus, when asked to select only one among three identities which they considered as most important to promote and protect—China’s identity as ruled by the CCP; China’s historical and cultural identity; or Hong Kong’s identity as a pluralistic and international society—65 percent selected the final option, with about 35 percent choosing the second option; very few related to the first choice. Moreover, over 80 percent of those under age 40 selected the final option. In addition, between June 2007 and December 2015, Hong Kongers’ identity as citizens of China declined from 7.3 (10 reflecting the strongest identification) in June 2007, to 5.95 in June 2014, just after the State Council’s White Paper on Hong Kong. Thereafter, it continued to decline.<sup>5</sup>

### *From Occupy Central to the anti-extradition movement*

The obligation under the Basic Law to introduce “universal suffrage,” whereby all citizens could vote for the CE and for members of Legco, was an important com-

ponent of China's willingness to maintain, if not enhance, the "two systems."<sup>6</sup> However, on August 31, 2014, when Beijing finally proposed an electoral format for attaining universal suffrage for the 2017 CE election, it included, as per the Basic Law, a Nominating Committee sharply biased towards pro-Beijing candidates that would first vet all candidates, thereby rejecting anyone from the Pan-Democratic camp from competing in the election. While this proposal was a significant improvement over the 800-1200 member "Election" Committees used for the previous three CE elections, thousands of Hong Kongers, particularly those under 40, rejected this effort—as did the democratic bloc in Legco—and on September 29, 2014, occupied the Admiralty district of Hong Kong, seriously disrupting the city for 79 days. Still, after the protests petered out (the last protesters seemed not to know how to end their protest, and they were expelled by riot police under injunctions against blocking public areas), the HKG (and Beijing) made no political concessions.

The refusal by Beijing to further liberalize the political system after Occupy Central had major consequences. First, many young Hong Kongers turned "nativist," arguing for greater autonomy for Hong Kong, while others began to advocate independence for Hong Kong after 2047, thereby denying that the "two systems" existed within the context of "one country." According to a survey in July 2016, one sixth (17%) of Hong Kongers supported independence after 2047, with nearly 40% of Hong Kongers aged 15 to 24 feeling that way.<sup>7</sup> Second, these views influenced the Legco election in September 2016, when six localists were elected to the parliament.

Thereafter, the HKG and Beijing worked in consort to tighten political control. Based on a ruling by the SC-NPC, the six localist legislators were ejected from Legco for not taking the oath of office in a serious enough manner, ending the pan-democrats ability to block unpopular legislation. Several candidates for public office who had advocated "self-determination" for Hong Kong after 2047 were denied the right to run, the pro-independence Hong Kong National Party was

banned in September 2018, and any discussion of independence was deemed treasonous. In April 2019, nine people who encouraged Occupy Central were found guilty of creating a public nuisance, and several of them went to jail for 16 months. Also pending was a National Anthem Law (now also suspended) under which people who are perceived to misbehave during the playing of China's "March of the Volunteers" could be sentenced to three years in prison.

### *The anti-extradition mutual legal assistance bill movement*

The current crisis was triggered by the decision of the CE to revise the Fugitive Offenders Ordinance (FOO) and the Mutual Legal Assistance Ordinance (MLAO). The revised FOO would let Hong Kong extradite residents or citizens of Hong Kong to the Mainland, without undergoing due process in Hong Kong, while the revision of the MLAO meant that when such requests were made, and if the paperwork was in order, the suspect's assets could be frozen. While the extradition part of the bill requires that charges must have been laid for an indictable offence carrying a minimum sentence of – as drafted – 1 year, then revised to 3 years, and finally revised to 7 years, the mutual legal assistance part does not require that any charges have been laid – it merely requires that the requesting authority claim that the target person or corporation be under "suspicion." As these revisions would lower the barrier between Beijing and Hong Kong's legal systems, most Hong Kongers, including the local Chinese and foreign chambers of commerce, the legal community, professionals, academics, foreign consulates, and foreign firms, were in an uproar.

A survey taken on June 4, 2019, showed strong opposition to the law, the lack of trust in Lam, and the continuing mistrust of Beijing. One survey found that 60% of Hong Kongers were "extremely opposed" to this policy, while only 11 percent "strongly" supported it. Similarly, 67 percent of Hong Kongers surveyed said that if the extradition process were established, they would lose all confidence in the "one country, two systems" policy.

Although one million people marched on June 9 in opposition to the law, Lam insisted on introducing the bill for a second reading on June 12. But after young people surrounded Legco, engaging in minor acts of violence that triggered a fierce counterattack by the police, she did cancel the Legco session two days later. Thus, as protestors who vandalized Legco on July 1 wrote on the tables in the hall, Lam had shown them that the HKG would never listen to peaceful protests but would only respond to violence.

### *Economic efforts to support “one country, two systems”*

Despite these efforts to move Hong Kong politically closer to “one country,” Beijing has also tried to improve the economy in Hong Kong, showing Hong Kong people the benefits of being part of the People’s Republic. These policies included the Closer Economic Partnership Agreement (CEPA), which gave Hong Kong professionals access to the China market earlier on than stipulated by China’s World Trade Organization accession agreement. Under the Individual Visitors Scheme, millions of Mainlanders have received visas to visit Hong Kong, spending large sums of money. And through bridges, high speed rail, and public policy, Hong Kong has been economically more integrated with the Mainland.

However, these policies are a double-edged sword, as the massive increase of tourists has severely disrupted life for many people in Hong Kong. As “day traders” from the Mainland flooded across the border to buy commodities that are in short supply in China, such as safe baby food, Hong Kong residents near the border found their subways jammed; they also had to travel further to buy those commodities for their own families. Finally, the increased economic integration seemed to be of limited value to most young Hong Kongers, who prefer to stay out of the Mainland, even as talented Mainland students, whose presence in Hong Kong universities increased significantly, reducing the number of jobs available for local students in the local Hong Kong economy. Young Hong Kongers have also seen the price of housing rise astronomically, pushed by mainlanders who buy Hong Kong property as a safe haven for their money. In all these cases, efforts to

make the system work economically led to deleterious outcomes for most people in Hong Kong.

### *Conclusion*

The “one country, two systems” policy was always problematic, given the major differences between the two systems. Still, the policy might have succeeded had Beijing and the HKG left things relatively alone until 2047. But, perhaps, convinced that foreign countries would use Hong Kong’s open “system” to undermine China’s sovereignty, weaken its national security, and destabilize the Chinese “system,” Chinese leaders have continually tried to edge Hong Kong closer to “one system.” Moreover, most efforts were poorly implemented largely because the HKG has either ignored the lack of “Chinese” identity among Hong Kongers or been out of touch with the mood of Hong Kong people.

Thus, we have witnessed continued and evolving forms of resistance, from marches, to civil disobedience, and to violent confrontations by succeeding generations of Hong Kongers, all in the name of keeping Hong Kong an open society. The current social unrest, however it may end, is just one more manifestation of the battle over the future of Hong Kong.

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1. Richard C. Bush, *Hong Kong in the Shadow of China: Living with the Leviathan* (Washington, DC: Brookings Institution Press, 2016), p. 15.

2. These comments are the result of the author’s personal observations and conversations with protestors at that time.

3. “HKU poll: Only 3.1% of young Hongkongers identify as Chinese, marking 20 year low,” <https://www.hongkongfp.com/2017/06/21/hku-poll-3-1-young-hongkongers-identify-chinese-marking-20-year-low/>

4. Michael DeGolyer, “Constitutional Reform: Confrontation looms as Hong Kong consults,” (Hong Kong, presentation in April 2014).

5. “People’s Ethnic Identity,” Public Opinion Program, The University of Hong Kong,

<https://www.hkupop.hku.hk/english/popexpress/ethnic/>

6. Basic Law Art. 45 defined universal suffrage for the CE election while BL Art. 68 set the terms for the LegCo election. Also, the CE Nomination Committee, once “universal suffrage” was to be introduced, was to be “broadly representative” (i.e. reflect society – which it arguably does not) and to operate on “democratic principles” per BL Art. 45).

7. Gene Lin, "CUHK survey finds nearly 40% of young Hongkongers want independence after 2047," *Hong Kong Free Press*, July 25, 2016.

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