

The Bad Birth and Premature Death of “One Country, Two Systems” in Hong Kong

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Abstract

Hong Kong's “One Country, Two Systems” model, which already suffered from gradual erosion since the handover in 1997, experienced a dramatic death in 2020. On the eve of the 23rd anniversary of Hong Kong's handover to Chinese rule on July 1, 2020, the Chinese Communist Party (CCP) imposed a National Security Law (NSL) — or, more accurately, a regime security law — to bring its secret police and public security agents to openly operate in the city. The authorities claim that the NSL is an immediate response to the anti-extradition protest, but the premature death of “One Country, Two Systems” was long in the making. Hong Kong people might have viewed the “One Country, Two Systems” promise as a shield to protect preexisting freedoms and rights against intrusion of the mainland's one-party dictatorship. However, the CCP understood the model in economic-financial terms and envisioned a city of “capitalism without freedom.” The divergent interpretations were already evident in the discrepancy between the 1984 Sino-British Joint Declaration and the 1990 Basic Law: while the former guarantees “a high degree of autonomy, except in foreign and defense affairs,” the latter allows Beijing to retain the final interpretation and opens the door to the central government's interference in all aspects of local governance.

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Hongkongers have responded to broken promises with waves of ever-broadening protest. The CCP, which has displayed no tolerance for dissent in mainland China since the Tiananmen crackdown in 1989, has met protests in Hong Kong with ever more direct control. This article details the death of “One Country, Two Systems” through the ever-escalating cycles of repression and resistance over the decades.

KEYWORDS: “One Country, Two Systems”, Sino-British Joint Declaration, Basic Law, Tiananmen, National Security Law, anti-extradition protest, umbrella movement, Liaison Office, Hong Kong and Macao Affairs Office (HKMAO), Central Coordination Group for Hong Kong and Macau Affairs.

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I. Introduction: The Premature Death of “One Country, Two Systems”

Hong Kong’s “One Country, Two Systems” model, which already suffered from erosion since the handover in 1997, experienced a premature and dramatic death in 2020. On the eve of the 23rd anniversary of Hong Kong’s handover to Chinese rule on July 1, 2020, the Chinese Communist Party (CCP) imposed a National Security Law (NSL) — or, more accurately, a regime security law — to “prevent, stop, and punish” the crimes of “secession,” “subversion,” “terrorism,” and “collusion with foreign forces.”¹ These terms are vaguely defined to cover any forms of dissent. The UN Human Rights Council Special Rapporteurs encouraged the Chinese government to “urgently repeal and independently review” the NSL, expressing grave concern that “[t]errorism and sedition charges are being improperly used to stifle the exercise of fundamental rights, which are protected under international law.”² Jerome A. Cohen, “godfather” of the China law field, declared that the NSL amounted to “a Takeover” of Hong Kong.³

The NSL effectively abrogates Hong Kong’s constitutional structure, the “One Country, Two Systems” model, under which Hong

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- 1 SCMP Reporters, *National Security Law: Tough New Reality for Hong Kong as Offenders Face Maximum Sentence of Life in Jail*, SOUTH CHINA MORNING POST (June 30, 2020), <https://www.scmp.com/news/hong-kong/politics/article/3091241/national-security-law-chinese-president-xi-jinping-signs>.
 - 2 Fionnuala Ní Aoláin et al., *The Office of the High Commissioner for Human Rights, Hong Kong: Arrests under Security Law, a Serious Concern*, OHCHR (Oct. 12, 2021), <https://news.un.org/en/story/2021/10/1102882> [https://perma.cc/7WAS-XZZE].
 - 3 Jerome A. Cohen, *My Quick Reading of the Troubling National Security Law for Hong Kong*, JERRY’S BLOG (July 2, 2020), <http://www.jeromecohen.net/jerrys-blog/my-quick-reading-of-the-troubling-national-security-law-for-hong-kong>.

Kong was reverted to Chinese rule in 1997. The Basic Law states in Article 22 that “no department of the Central People’s Government... may interfere in the affairs” of the special administrative region.⁴ The NSL establishes in Hong Kong the Office for Safeguarding National Security to “guide, oversee, and supervise” local officials with a Hong Kong budget of HK\$8 billion and an undisclosed central government budget.⁵ It is Beijing’s cynical response to the explosion of anger and frustrations with the extradition law in 2019: If Hongkongers did not want to be sent across the border to mainland China, the central government simply brings its secret police and public security agents to openly operate in the city.

The entirety of pro-democracy politicians and activists have now been arrested or driven into exile. The national security police have arrested 175 individuals with 104 formally charged as of January 17, 2022.⁶ The accused are set to be convicted by Beijing’s handpicked national security judges, with punishment as severe as life imprisonment. The police have additionally deployed the city’s colonial-era public order laws to arrest 10,260 people related to the anti-extradition protest

4 The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China [hereinafter Basic Law], Apr. 4, 1990, effective July 1, 1997, <https://www.basiclaw.gov.hk/en/basiclaw/index.html>.

5 Christy Leung & Tony Cheung, *Beijing’s National Security Permanent Office Gets New Site at Hong Kong’s West Kowloon Waterfront after Land Grant from City Government*, SOUTH CHINA MORNING POST (Apr. 23, 2021), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3130842/new-site-hong-kongs-west-kowloon-waterfront-beijings>.

6 Lydia Wong & Thomas E. Kellogg, *New Data Show Hong Kong’s National Security Arrests Follow a Pattern*, CHINAFILE (May 3, 2021), <https://www.chinafile.com/reporting-opinion/features/new-data-show-hong-kongs-national-security-arrests-follow-pattern> (last visited Jan. 26, 2022) (Note, the data have been regularly updated since original publication).

since June 9, 2019.⁷ To stop opposition figures from fleeing, the Hong Kong Immigration Director is given unlimited power to ban anyone from entering or leaving the city.⁸

Beijing has further destroyed the Basic Law’s framework for democracy. Articles 45 and 68 of the Basic Law promises the “ultimate aim” of “universal suffrage” in the selection of the Chief Executive and the Legislative Council. In reality, the mini-constitution’s detailed electoral arrangements have kept the pro-democracy camp out of the top office and in perpetual minority in the Legislative Council. NSL-era Hong Kong would not tolerate even such a constrained, semi-democratic role. The Hong Kong authorities disqualified a large number of previously elected pro-democracy Legislative Councilors and District Councilors in 2020-21 while many pro-democracy members resigned en masse in protest. The completely subservient Legislative Council then passed new electoral arrangements in 2021 to conform to China’s new Basic Law amendments and ensure that only “patriots” can run in subsequent elections.⁹ The Election Committee is expanded from 1,200 to 1,500 members fully stacked with “patriots” to rubber-stamp Beijing’s chosen candidates. The Legislative Council increases from 70 to 90 members, with 40 selected by the Election Committee. Directly elected legislative seats are reduced from half to 20, and such candidates require nomination by the Election Committee. The remaining 30 seats are

7 See SOCIAL MOVEMENT DATABASE (社運資料庫), <https://www.hkprotestdb.com/> (last visited Jan. 26, 2022).

8 Marius Zaharia, *Hong Kong Passes Immigration Bill, Raising Alarm over ‘Exit Bans’*, REUTERS (Apr. 28, 2021), <https://www.reuters.com/world/asia-pacific/hong-kong-passes-immigration-bill-raising-alarm-over-exit-bans-2021-04-28/>.

9 *Hong Kong Electoral Reform: LegCo Passes ‘Patriots’ Law*, BBC (May 27, 2021), <https://www.bbc.com/news/world-asia-57236775>.

returned by narrowly-based functional-corporate constituencies that guarantee the selection of “patriots.” As if the Election Committee cannot be fully trusted, all candidates are vetted by a Candidate Eligibility Review Committee with each candidate investigated by the national security police.¹⁰ The legislature thus newly constituted in 2022 is expected to speedily pass any laws and budget presented by the government.

As if the NSL and electoral changes may not be enough to silence recalcitrant and resilient Hong Kong people, the authorities are aiming for an “overkill”¹¹ by introducing new national security legislation to cover offences not yet included, such as treason, theft of state secrets, a ban on foreign political organisations from conducting political activities in the city and local political bodies from establishing ties with their foreign counterparts.¹²

Beijing claims that the NSL and related measures are immediate responses to the anti-extradition protest, but the premature death of “One Country, Two Systems” was long in the making. According to William

¹⁰ AFP, *Hong Kong Will Vet Political Candidates' Entire Past to Ensure Loyalty to China — Justice Chief*, HONG KONG FREE PRESS (Apr. 3, 2021), <https://hongkongfp.com/2021/04/03/hong-kong-will-vet-political-candidates-entire-past-to-ensure-loyalty-to-china-justice-chief/>.

¹¹ This term is adopted from the treatment of the *Apple Daily*. The Editorial Board, *Hong Kong's Apple Daily Overkill*, WALL STREET JOURNAL (July 30, 2021), <https://www.wsj.com/articles/hong-kong-apple-daily-next-digital-investigation-paul-chan-jimmy-lai-11627683569>.

¹² Jeffie Lam, *National Security: What Is Article 23 in Hong Kong and Why Is the Issue Back in the Spotlight?* SOUTH CHINA MORNING POST (June 28, 2021), <https://www.scmp.com/news/hong-kong/politics/article/3138956/national-security-what-article-23-hong-kong-and-why-issue>; Grenville Cross, *National Security Law: Progress and Unfinished Business*, CHINA DAILY (Dec. 10, 2021), <https://www.chinadailyasia.com/article/251270#National-Security-Law:-Progress-and-unfinished-business>.

Overholt, when Chinese leaders “saw demonstrations in Hong Kong, they feared another Tiananmen Square”; when they “heard demands for democracy, they feared a Taiwan-style independence movement.”¹³ In 2012, Zhang Xiaoming, former Director of the Hong Kong and Macao Affairs Office (HKMAO), remarked that Beijing’s ultimate policy toward the democratic camp was to “push them to death (往死裡整).”¹⁴ In 2014, Zhang further told pan-democratic legislators that “the fact that you are still living is a sign of the central government’s tolerance (你們能活著，已顯出中央的包容).” In 2016, Chen Zuoer, former HKMAO deputy director, instructed Hong Kong to “hunt down” pro-independence “rats” with “no mercy.”¹⁵ When Carrie Lam, current Chief Executive of Hong Kong, called protesters “enemies of the people” in 2019,¹⁶ she was merely regurgitating Beijing’s long-standing position.

13 William H. Overholt, *Hong Kong: The Rise and Fall of “One Country, Two Systems”*, ASH CENTER 11 (Dec. 2019), https://ash.harvard.edu/files/ash/files/overholt_hong_kong_paper_final.pdf.

14 Quoted in Ching Cheong (程翔), *Xianggang Yunluoji Zhiyi: Shei Shuaixian Pohuai he Fenhua Xianggang?* (香港隕落記之一：誰率先破壞和分化香港?) [*Record on Hong Kong’s Fall No. 1: Who Took the Lead in Destroying and Dividing Hong Kong?*], HONG KONG CITIZEN NEWS (眾新聞) (Jan. 21, 2021), <https://www.hkcnews.com/article/37400/香港工委統戰部大專生支部-泛民-初選大搜捕-37596/香港隕落記之一：誰率先破壞和分化香港?>.

15 Christy Leung, ‘No Mercy’ for Hong Kong’s Pro-Independence ‘Rats’ Says Head of Top Beijing Think Tank, SOUTH CHINA MORNING POST (Nov. 30, 2016), <https://www.scmp.com/news/hong-kong/politics/article/2050425/no-mercy-hong-kongs-pro-independence-rats-says-head-top>.

16 Holmes Chan & Tom Grundy, ‘Wishful Thinking’ to Believe Hong Kong Gov’t Will Yield to Protesters’ Demands, Leader Carrie Lam Says, HONG KONG FREE PRESS (Nov. 12, 2019), <https://hongkongfp.com/2019/11/12/wishful-thinking-believe-hong-kong-govt-will-yield-protesters-demands-leader-carrie-lam-says/>.

II. The Bad Birth of the “One Country, Two Systems” Model

In a post-mortem exercise, the “One Country, Two Systems” model suffered from a premature death because it had a bad birth with multiple complications.

The 1984 Sino-British Joint Declaration officially outlines the model by promising “Hong Kong people ruling Hong Kong” under a “high degree of autonomy” for 50 years until 2047. The model was problematic from the start. The UK and Hong Kong focused on the political side of the “Two Systems,” believing that the arrangement would create a firewall shielding the city’s much cherished rule of law, independent judiciary, neutral civil service, impartial police, freedom of speech and free press from the one-party dictatorship across the border. Beijing, however, viewed the “Two Systems” in economic-financial terms — Hong Kong’s capitalism versus China’s socialism. More specifically, while Hong Kong understood the model as protection for preexisting freedoms and rights, Beijing’s design for Hong Kong was “capitalism without freedom.”¹⁷ Chinese officials in recent years reiterated that the Joint Declaration, though it was filed with the United Nations and counts as a treaty, was “now void and only covered the period from the signing in 1984 until the handover in 1997.”¹⁸

17 See Victoria Tin-bor Hui, *Crackdown: Hong Kong Faces Tiananmen 2.0*, 31(4) J. DEMOCRACY 122 (2020).

18 Danny Lee & Gary Cheung, *Beijing Tells Britain It Has No ‘Moral Responsibility’ for Hong Kong — Remarks Come after Ambassador Told UK Lawmakers Joint Declaration Is ‘Void’*, SOUTH CHINA MORNING POST (Dec. 3, 2014), <http://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless>.

Whether or not Beijing leaders ever meant to abide by the Joint Declaration, by the time the Basic Law was promulgated in 1990, the 1989 Tiananmen crackdown fully exposed the structural contradiction of the “One Country, Two Systems” model. When protests swept through China in 1989, Hong Kong people marched under the slogan “Today’s Tiananmen, Tomorrow’s Hong Kong.”¹⁹ In the hope that a more open China would bode well for the city, Hongkongers donated money and material to show solidarity. After the bloody repression, hope gave way to despair: If the CCP could shoot its own people today, what would they do to Hongkongers tomorrow? This fear gave rise to the conviction that only full democratization could safeguard the city’s fundamental rights and freedoms, giving birth to Hong Kong’s democracy movement. Beijing, on the other hand, came to view Hong Kong as a subversive base and was determined to make Hong Kong safe for the CCP.

The Basic Law enacted in 1990 rolls back critical promises.²⁰ Recently declassified documents show that London complained about key discrepancies between the two documents.²¹ The Joint Declaration guarantees “a high degree of autonomy, except in foreign and defense

19 Victoria Tin-bor Hui, *Yesterday’s Tiananmen, Today’s Hong Kong*, BLOG (June 4, 2020), <https://victoriatbhui.wordpress.com/2020/06/04/yesterdays-tiananmen-todays-hong-kong/>.

20 See Michael C. Davis, *Hong Kong’s Umbrella Movement: Beijing’s Broken Promises*, 26(2) J. DEMOCRACY 101 (2015). This rollback would continue step by step in the years to follow. See MICHAEL C. DAVIS, *MAKING HONG KONG CHINA: THE ROLLBACK OF HUMAN RIGHTS AND THE RULE OF LAW* (2020).

21 *Ying Zaozhi Jibenfa Zhenggai Shifa Loudong Xiang Jing Ti Xiudin Caogao Beiju* (英早知基本法政改 释法漏洞 向京提修訂草稿被拒) [*UK Knew Early about Holes with Political Reforms and Interpretation in the Basic Law, Raised Amendments with Beijing but Rejected*], BIBLIOTHÈQUE (果靈聞庫) (Jan. 5, 2020), <https://collection.news/appledaily/articles/G7EYD5UKPU7XUBQ3CK4YFK5GBI> [<https://perma.cc/TK74-BSKU>].

affairs.”²² The important qualifier is omitted in Article 2 of the Basic Law — while “[t]he National People’s Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy,” it could also limit that authorization.²³ In addition, Article 158 gives the final interpretation power over the Basic Law to the National People’s Congress Standing Committee (NPCSC) — a power that Beijing did not hesitate to wield over the years.²⁴

If pre-NSL Hong Kong needed any clue to what the future might hold, Macau was the role model.²⁵ When President Xi Jinping presided over celebrations marking the twentieth anniversary of Macau’s return on December 20, 2019, he championed Macau as the “shining chapter” in the practice of “One Country, Two Systems”: accepting “One Country” as the prerequisite and basis of “Two Systems,” integrating the central government’s “comprehensive jurisdiction” over the city, passing national security and national anthem laws, forming a National Security

22 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong, Dec. 19, 1984, effective May 27, 1985, <https://www.cmab.gov.hk/en/issues/jd2.htm>.

23 Basic Law art. 2 (H.K.).

24 Karen Cheung, *China’s Power to Interpret Hong Kong’s Basic Law ‘Greatest Threat to Rule of Law,’ Bar Assoc. Head*, HONG KONG FREE PRESS (Mar. 6, 2018), <https://hongkongfp.com/2018/03/06/chinas-power-interpret-hong-kongs-basic-law-greatest-threat-rule-law-bar-assoc-head/>.

25 *State Leader Li Zhanshu Tells HK to Fall in Line, Like Macau*, THE STANDARD (Dec. 3, 2019), <https://www.thestandard.com.hk/breaking-news/section/4/137930/State-leader-Li-Zhanshu-tells-HK-to-fall-in-line,-like-Macau> [https://perma.cc/Z2TW-YE7D]; *Xianggang Shiwei: Li Zhanshu Jie Aomen Jinggao Xianggang Ruhe Jiedu* (香港示威：栗戰書借澳門警告香港如何解讀?) [*Hong Kong Protest: How to Read Li Zhanshu’s Warning to Hong Kong With the Macau Example*], BBC NEWS CHINESE (BBC 中文網) (Dec. 4, 2019), <https://www.bbc.com/zhongwen/trad/chinese-news-50654646>; Steven Lee Myers, *In Macau, China Sees a Model for a Rebellious Hong Kong*, N.Y. TIMES (Dec. 18, 2019), <https://www.nytimes.com/2019/12/18/world/asia/macau-china-hong-kong-protest.html>.

Committee chaired by the Chief Executive, respecting the Chief Executive’s paramount authority over executive, legislative and judicial branches of government, promoting patriotic education, adopting mainland textbooks in schools, and rejecting all forms of foreign interference.²⁶ This was clearly meant to be a stab at Hong Kong which long rebelled against national security and national anthem laws, national education, and executive control over legislative and judicial branches.

Charles Tilly and Sidney Tarrow point out that the “structural disjunction” between “the largely authoritarian Communist Chinese state and its quasi-democratic enclave” builds in “an unstable mix of conventional, confrontational, and violent behavior” with “unpredictable outcomes.”²⁷ Since 1990, Beijing denied Hongkongers’ democratic aspirations at every step of the way. Hongkongers responded to broken promises with waves of ever-broadening protest. Beijing, in turn, further undercut Hong Kong’s autonomy and asserted ever more direct control, which only radicalized dissent. The rest of this article details ever-escalating cycles of repression and resistance that led to the premature death of “One Country, Two Systems” in 2020: Hong Kong’s protest against national security legislation in 2003 followed by Beijing’s subsequent imposition of “two administrations,” the Umbrella Movement of 2014 leading to Beijing’s struggles against pillars of dissent, and the anti-extradition protest of 2019 with Beijing’s imposition of the NSL.

²⁶ Xinhua, *Xi Lauds Macao’s “Shining Chapter” of “One Country, Two Systems” Practice*, PEOPLE (Dec. 21, 2019), <http://en.people.cn/n3/2019/1221/c90000-9642639.html>.

²⁷ CHARLES TILLY & SIDNEY TARROW, *CONTENTIOUS POLITICS* 75, 89, 91, 93 (2d ed. 2015).

A. The First Cycle: The Anti-National Security Protest of 2003 Followed by Beijing Imposing a “Second Administration” over Hong Kong

The cycle of repression and resistance picked up steam not long after the handover in 1997. Beijing wanted Hong Kong to pass a national security law in 2002. While Article 23 of the Basic Law requires its enactment, the legal profession took the lead in contesting that the proposed bill did not provide for sufficient safeguards as required by the International Covenant on Civil and Political Rights.²⁸ The bill would probably have been passed, if not because the Severe Acute Respiratory Syndrome (SARS) alerted Hongkongers that Beijing had an expansive understanding of state secrets that included the secret emergence and spread of a deadly virus. Once SARS subsided in the summer of 2003, half a million protested on July 1. The bill was shelved as a result.

While Hongkongers championed the victory, Beijing did not take this setback lightly and sped up the erosion of “One Country, Two Systems.”²⁹

In addition to the long-standing HKMAO, Beijing formed a Central Coordination Group for Hong Kong and Macau Affairs (renamed in 2020 as the Central Leading Group on Hong Kong and Macau Affairs) to oversee the Special Administrative Regions from the capital. It also

28 SCMP Reporter, *The Article 23 Argument*, SOUTH CHINA MORNING POST (July 1, 2003), <https://www.scmp.com/article/420333/article-23-argument>.

29 Chi-kin Lo (盧子健), *Zhengdun Gangaoban: Jiaqian Gjiquan, Gengjia Weixian* (整頓港澳辦：加強集權、更加危險) [*Reshuffling HKMAO: Strengthening Centralization and Heightening Danger*], HONG KONG CITIZEN NEWS (眾新聞) (Feb. 16, 2020), <https://www.hkcnews.com/article/26956/港澳辦-夏寶龍-駱惠寧-26956/整頓港澳辦：加強集權、更加危險>.

created a structure of “two administrations” in Hong Kong.³⁰ The “first administration” was headed by the Chief Executive, who was technically selected by the 1,200-member Election Committee but was in fact handpicked by Beijing. The Chief Executive enjoyed “overriding power” over the executive, legislative, and judicial branches.³¹ In this so-called executive-led system, the Chief Executive was guaranteed majority votes to push through any bills. S/he exercised the power of appointments and promotions to fill the Department of Justice, the police, and the civil service with loyalists. S/he could control even non-governmental sectors through funding and licensing. In the aftermath of the 2003 protest, Beijing’s Liaison Office in Hong Kong, created in 2000, became the “second administration” to supervise the “first administration.” The former director Wang Zhimin famously commented that, “It is good that Central (the Hong Kong government) and Western Districts (the Liaison Office) work together.”³² “Western District” intervened not only at the top levels of the Hong Kong government but also reached deep into all 18 administrative districts and mobilized for pro-Beijing candidates in elections. These arrangements effectively turned the promise of “Hong Kong people ruling Hong Kong” into

30 See Russell Hsiao’s interview, Hong Kong, 11 July 2019. Russell Hsiao, *A Preliminary Survey of CCP Influence Efforts in Hong Kong*, 19(14) CHINA BRIEF (July 31, 2019), <https://jamestown.org/program/a-preliminary-survey-of-ccp-influence-efforts-in-hong-kong/>.

31 Vivian Zeng, *Hong Kong’s Leader Has Special ‘Overriding Power’ over Executive, Legislature and Judiciary — Top Official*, HONG KONG FREE PRESS (Sept. 12, 2015), <https://www.hongkongfp.com/2015/09/12/hong-kongs-leader-has-overriding-power-over-executive-legislature-and-judiciary-top-official-in-hk/>.

32 Wang Zhimin “*Zhonghuan Xihuan Xingmai*” *Lun Zeng Re Reyi* (王志民「中環西環行埋」論曾惹熱議) [*Wang Zhimin’s “Central and Western Districts Coming Together” Once Stirred Up Controversy*], BASTILLE POST (Jan. 5, 2020), <https://www.bastillepost.com/australia/article/1338247-王志民「中環西環行埋」論曾惹熱議?variant=zh-cn> [<https://perma.cc/6DFM-4ZWR>].

“Beijing appointees ruling Hong Kong” and “Western District ruling Hong Kong.”

B. The Second Cycle: The Umbrella Movement of 2014 and Beijing’s “Comprehensive Jurisdiction” over Hong Kong

The Basic Law stipulates “gradual and orderly progress” in the selection of the Hong Kong chief executive up to 2007 and the election of the Legislative Council up to 2008, with the “ultimate aim” of “universal suffrage.” This language gave Hong Kong people the expectation that universal franchise would begin a decade after 1997. That did not happen — in 2007, Beijing issued a decision to postpone any changes for 10 years. By 2013, Benny Tai, a Hong Kong University Law School professor, began to agitate for universal suffrage by threatening to mobilize an occupation of the city’s central business district. However, in August 2014, Beijing issued yet another decision, backed up by a white paper that proclaimed the central government’s “comprehensive jurisdiction” over the city.³³ The decision also restricted “one person, one vote” in the election of the Chief Executive by allowing only two or three vetted candidates.

Student leaders such as Joshua Wong took the lead in protesting against the decision. They had come of age by protesting against the high-speed railway and national education in 2009 and 2012, respectively. By 2014, these youthful faces had become seasoned

³³ Information Office of the State Council, *The Practice of the ‘One Country, Two Systems’ Policy in the Hong Kong Special Administrative Region* (June 10, 2014), <http://www.scio.gov.cn/zfbps/ndhf/2014/Document/1373163/1373163.htm>; National People’s Congress, *Full Text of NPC Decision on Universal Suffrage for HK Chief Executive Selection*, XINHUA (Aug. 31, 2014), http://www.china.org.cn/china/2014-08/31/content_33390388.htm.

activists with territory-wide appeal. When they were forcibly dragged away from a protest at the Central Government Offices, other residents poured in to show support. The “Occupy Central” campaign promoted by Benny Tai mutated into the Umbrella Movement after protesters opened their umbrellas to shield themselves from tear gas. From late August to early December, protesters occupied busy roads to decry “fake universal franchise” and demand “genuine universal suffrage.” A Chinese University study estimates that 1.2 million people out of a population of 7.2 million participated at various times and in various forms.³⁴ Despite its unprecedented scale, the movement did not achieve its goal and only temporarily blocked Beijing’s plan for vetted elections.

The Umbrella Movement took Hong Kong by storm. To prevent Umbrella 2.0, Chen Zuor, former deputy director of HKMAO, vowed in December 2014 to tighten “Hong Kong’s governance.”³⁵ He declared “a long-term struggle with the forces that bring calamity to Hong Kong,” taking the fight “from the street to the law courts, to the Legislative Council, to inside the government, and to universities and secondary schools.”³⁶

³⁴ Center for Communication and Public Opinion Survey, *Public Opinion & Political Development in Hong Kong: Survey Results*, CHINESE UNIVERSITY OF HONG KONG (Dec. 18, 2014), http://www.com.cuhk.edu.hk/ccpos/images/news/TaskForce_Press_Release_141218_English.pdf.

³⁵ Tony Cheung & Fanny W. Y. Fung, *Now Hong Kong Must Face the Big Questions in Wake of Occupy*, SOUTH CHINA MORNING POST (Dec. 13, 2014), <http://www.scmp.com/print/news/hong-kong/article/1661573/now-city-must-face-big-questions-wake-occupy>; Chen Zuor: *Rijun Zengzai Xianggang Shibao Xianzai Yingguo Riben Du Bugan Ti Zhe Shi* (陳佐洱：日軍曾在香港施暴 現在英國日本都不敢提這事) [Chen Zuor: Japanese Troops Once Raped Hong Kong, Now Neither the UK Nor Japan Dares to Raise This History], PHOENIXTV (Dec. 13, 2014), https://news.ifeng.com/a/20141213/42711406_0.shtml.

³⁶ *Id.*

The Hong Kong government duly complied. Ahead of the Legislative Council elections in 2016, the authorities barred an independence advocate Edward Leung from running. Two like-minded candidates, Wai-ching Yau and Chung-hang Leung of Youngspiration, were elected and displayed a “Hong Kong is not China” flag during their swearing-in ceremony in October 2016. The then Chief Executive Chun-ying Leung asked the court to disqualify them. But before the court issued a verdict, Beijing issued a binding interpretation of the Basic Law in November that was then used to retroactively disqualify any legislator-elect who made revisions or additions to the formal oath.³⁷ The court duly expelled the duo from the Legislative Council. The Department of Justice sought to disqualify four more legislators who never supported independence but played with the language in their oath of office: Democracy Groundwork’s Lau Siu-lai, Demosisto’s Nathan Law, the League of Social Democrats’ Leung Kwok-hung and architectural sector lawmaker Edward Yiu. Beijing’s interpretation was a direct interference with the judiciary’s independence.³⁸ As Hong Kong Watch puts it,

“In this instance, [Beijing] has effectively issued an amendment to Hong Kong’s constitution to ensure that candidates are successfully politically screened. Although the CCP do technically have the right to ‘interpret’ the constitution, they do not, under Hong Kong’s Basic Law, have the right to amend local laws. In order to disqualify candidates, they have

³⁷ See Cheung, *supra* note 24.

³⁸ Elson Tong, *HK20: Interview — Beijing’s Restraint with Hong Kong’s Rule of Law Has Expired, Says Law Prof. Johannes Chan*, HONG KONG FREE PRESS (June 25, 2017), <https://hongkongfp.com/2017/06/25/hk20-interview-beijings-restraint-hong-kongs-rule-law-expired-says-law-prof-johannes-chan/>.

effectively amended local laws: and therefore, committed a violation of... the ‘high degree of autonomy’ guaranteed for Hong Kong in the constitution.”³⁹

Pro-Beijing voices were never reticent about their displeasure with Hong Kong’s judicial independence as promised in the Basic law. The Chief Executive’s “overriding power” over appointments already turned the Justice Department into a trusted agency to charge the arrested with the heaviest crimes. Even judges’ impartiality was partially weakened by promotions and appointments of loyalists. Nonetheless, the courts were still buttressed by professional judges who issued verdicts strictly based on evidence and who followed the common law tradition sensitive to the free speech rights of public order defendants.

In the aftermath of the Umbrella Movement, central officials and local pro-regime politicians repeatedly complained that judges released the majority of protest-related defendants or gave very lenient community service sentences to the convicted few, while jailing police officers convicted of abuse. Chen Zuor lamented that Occupy leaders were not being dealt with harshly enough in local courts.⁴⁰ The Department of Justice took the cue and appealed against the light community service given to young activists. By August 2017, the Court of Appeal handed down jail terms of six months to eight months for

39 HONG KONG WATCH, WHY HONG KONG MATTERS: UNDERSTANDING THE IMPORTANCE OF THE CITY TO CHINA AND THE WORLD 29 (2019), https://static1.squarespace.com/static/58ecfa82e3df284d3a13dd41/t/5e569c77e76e6430d0eb0108/1582734469230/Why+Hong+Kong+matters_web.pdf.

40 In November 2016, Chen Zuor complained about judges in a closed-door meeting: “The price of committing an offence was too low in some situations in Hong Kong... Taking the Occupy Movement as an example, how many movement leaders were brought to the court up until now? Why were they not in the court?” See Leung, *supra* note 15.

student leaders Joshua Wong, Nathan Law (also one of the disqualified legislators) and Alex Chow, all youthful leaders in the Umbrella Movement.⁴¹ Although they won a final appeal against the jail terms in February 2018, they had served some or most of the sentences and their conviction was reaffirmed.⁴² By April 2019, Benny Tai and eight more Occupy leaders were also handed down prison sentences of up to 16 months for conspiracy to cause public nuisance, inciting others to cause public nuisance, and inciting people to incite others to cause public nuisance, all rarely used common law crimes. (By 2021-22, Chow Hang-tung, a former leader of the defunct Alliance in Support of Patriotic Democratic Movement in China, was sentenced to 10 months for commemorating the June 4 massacre in 2020 and 15 months for posting about lighting a candle in 2021.⁴³)

Beijing also struggled against other pillars of “One Country, Two Systems.” As the Umbrella Movement was led by university professors and students, the Chief Executive stacked universities with loyalists and

41 Jasmine Siu, *Joshua Wong and Other Jailed Hong Kong Student Leaders See Political Careers Halted*, SOUTH CHINA MORNING POST (Aug. 17, 2017), <https://www.scmp.com/news/hong-kong/politics/article/2107216/occupy-activists-joshua-wong-and-nathan-law-jailed-hong-kong>.

42 Kris Cheng, *Jailed Hong Kong Democracy Activists Joshua Wong and Nathan Law Freed on Bail by Court of Final Appeal*, HONG KONG FREE PRESS (Oct. 24, 2017), <https://hongkongfp.com/2017/10/24/breaking-jailed-hong-kong-activists-joshua-wong-nathan-law-freed-bail-court-final-appeal/>; Jasmine Siu, *Hong Kong Democracy Activist Joshua Wong Wins Appeal Against Jail Term over Protest in Run-Up to Occupy*, SOUTH CHINA MORNING POST (Feb. 6, 2018), <https://www.scmp.com/news/hong-kong/law-crime/article/2132248/hong-kong-democracy-activist-joshua-wong-wins-appeal>.

43 Candice Chau, *Ex-organiser of Hong Kong Tiananmen Massacre Vigil Jailed for 15 Months over Banned 2021 Commemoration*, HONG KONG FREE PRESS (Jan. 4, 2022), <https://hongkongfp.com/2022/01/04/breaking-hong-kong-tiananmen-massacre-vigil-group-ex-leader-convicted-over-2021-banned-rally/>.

forced out pro-democracy faculty⁴⁴. In secondary schools, patriotic education was re-introduced in piecemeal fashion.

To many Hongkongers, Beijing was turning “One country, Two systems” into “One Country, 1.5 Systems,” ever closer to Macau’s “One System.”⁴⁵ As Tsang Yok-sing, a long-standing pro-Beijing politician, put it in 2015: “If the central government’s interference goes deeper and deeper into Hong Kong’s internal affairs, at some point quantitative changes will become qualitative changes. Even if Beijing does not abrogate ‘One Country, Two Systems’ by name, the central government will exert de facto direct rule over Hong Kong.”⁴⁶ His warning would come true with the NSL.

C. The Third Cycle: The Anti-Extradition Protests of 2019 with Beijing’s Abrogation of “One Country, Two Systems”

By early 2019, it looked as if the “two administrations” had firmly reined in Hong Kong. In February, the Hong Kong government proposed to amend the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance to allow extradition from Hong Kong to mainland China. Carrie Lam pledged that the bill came

44 Vivian Wang, *As Hong Kong Law Goes after ‘Black Sheep,’ Fear Clouds Universities*, N.Y. TIMES (Nov. 7, 2020), <https://www.nytimes.com/2020/11/07/world/asia/hong-kong-china-national-security-law-university.html>.

45 Ken Moriyasu, *Hong Kong Trimmed to ‘One Country, 1.5 Systems’ — Student Activists Argue that the Next Decade is Crucial to Secure Democracy*, NIKKEI ASIA (June 14, 2017), <https://asia.nikkei.com/Politics/Hong-Kong-trimmed-to-one-country-1.5-systems>.

46 Gary Cheung & Tony Cheung, *Outgoing Hong Kong Legco Chief Warns ‘One Country, Two Dystems’ Will Fall Apart If Beijing Keeps on Interfering*, SOUTH CHINA MORNING POST (Aug. 30, 2015), <http://www.scmp.com/news/hong-kong/politics/article/1853845/exclusive-hong-kong-legco-chief-says-urgent-review-needed>.

from her own volition and not from Beijing. But Reuters reports that the order came from the Central Commission for Discipline Inspection which was seeking a less politically damaging mechanism than extrajudicial kidnappings.⁴⁷ Lee Bo, a bookseller at Causeway Bay Books, had been kidnapped from Hong Kong and taken across the border in January 2016. Xiao Jianhua, a businessman with close ties to China's political elite, had been abducted from the Four Seasons Hotel on January 27, 2017.

Hong Kong people staged their “last stand.”⁴⁸ The extradition bill would take down the last pillar of the “Two Systems”: the protection of a still relatively professional judiciary in Hong Kong versus politicized courts subservient to the one-party dictatorship across the border. When jailed Occupy leaders called for a mass demonstration against the extradition law, 130,000 turned out on April 28. On June 9, a million marched. On June 12, tens of thousands surrounded the Legislative Council to block legislators from going in for a scheduled reading of the bill. The police used excessive force against protesters in full view of local and international media. At nightfall, the government labeled the day's events as “riots” and charged the arrested for “rioting.” Lam vowed to push on but then “suspended” the bill on June 15. Hongkongers were both emboldened by the small “victory” and enraged by police brutality on June 12. Up to 2 million demonstrated on June 16 demanding that the government formally withdraw the extradition bill,

47 David Lague, James Pomfret & Greg Torode, *How Murder, Kidnappings and Miscalculation Set off Hong Kong's Revolt*, REUTERS (Dec. 20, 2019), <https://www.reuters.com/investigates/special-report/hongkong-protests-extradition-narrative/>.

48 Victoria Tin-bor Hui, *Hong Kong's 'Last Stand'? How to Keep the Freedom Struggle Alive*, THE GLOBE POST (June 13, 2019), <https://theglobepost.com/2019/06/13/hong-kong-last-stand/>.

open an independent investigation into police abuses, drop the “riot” characterization of the protests, release those arrested on rioting charges, and reopen a dialogue on genuine universal suffrage truncated in 2014. Lam refused to formally withdraw the bill (until September 4) or make any concessions. Another 1.8 million turned out on August 18. The protest raged on through the summer into fall and winter. Confrontations spread from the streets to train stations, shopping malls and residential buildings across all major neighborhoods.

Beijing’s response was to have “One Country” completely take over “Two Systems,” which quickly added fuel to the fire for the rest of 2019. This time, the central government bypassed the “two administrations” altogether and asserted thinly veiled direct rule. The Central Coordination Group for Hong Kong and Macau Affairs chaired by Vice Premier Han Zheng began to mete out directives from Bauhinia Villa, Beijing’s command center in Shenzhen across the border. Before Lam “suspended” the extradition bill on June 15, she had met with Han.⁴⁹ When a Reuters correspondent asked in August if Lam had the autonomy to withdraw the bill, she had no answer.⁵⁰ She admitted in a leaked audio that, “Once an issue has been elevated... to a sort of sovereignty and security level..., the political room... for maneuvering is very, very, very limited.”⁵¹

49 See Lague, Pomfret & Torode, *supra* note 47.

50 *HK Leader Challenged: ‘Have Your Hands Been Tied by Beijing?’*, REUTERS (Aug. 13, 2019), <https://www.reuters.com/video/2019/08/13/hk-leader-challenged-have-your-hands-bee?videoId=586904474>.

51 Reuters Staff, *The Chief Executive ‘Has to Serve Two Masters’ — HK Leader Carrie Lam — Full Transcript*, REUTERS (Sept. 12, 2019), <https://www.reuters.com/article/us-hongkong-protests-lam-transcript-excl/exclusive-the-chief-executive-has-to-serve-two-masters-hk-leader-carrie-lam-full-transcript-idUSKCN1VX0P7>.

Beijing's public security ministry joined the coordination group in Fall 2019. When Lam met with Xi on November 4, Minister of Public Security Zhao Kezhi was in attendance. When Lam delivered her annual work report to Xi on December 16, Guo Shengkun, China's "security czar" (Zhao's boss) and head of the Central Political and Legal Affairs Commission, was present.⁵² When Chris Tang made his first official visit as Hong Kong's new police chief to Beijing on December 6-7, 2019, he met with Guo and Zhao in addition to the then HKMAO director.

The central government also directly issued warnings to protesters. On July 31, 2019, the Chinese military garrison in Hong Kong released a video showing Chinese troops practicing anti-riot drills in Hong Kong-like urban setting. In early August, 12,000 troops, likewise captured in media reports, participated in more drills in Shenzhen.⁵³ HKMAO called rare pressers to comment on the unrests. Spokespersons pledged support for the Hong Kong Chief Executive and the police on the first two pressers on July 29⁵⁴ and August 6.⁵⁵ They soon escalated the

52 Jun Mai, Echo Xie & William Zheng, *Why Was China's Domestic Security Chief Guo Shengkun at Carrie Lam's Meeting with Xi Jinping?*, SOUTH CHINA MORNING POST (Dec. 17, 2019), <https://www.scmp.com/news/china/politics/article/3042352/why-was-chinas-domestic-security-chief-guo-shengkun-carrie-lams>.

53 Phoebe Zhang, *Chinese Police Mass 12,000 Anti-Riot Officers in Shenzhen for Drill*, SOUTH CHINA MORNING POST (Aug. 6, 2019), <https://www.scmp.com/news/china/military/article/3021597/chinese-police-mass-12000-anti-riot-officers-shenzhen-drill>.

54 SCMP Reporters, *As It Happened: How Beijing Expressed 'Resolute Support' for Hong Kong's Government*, SOUTH CHINA MORNING POST (July 29, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3020466/hong-kong-and-macau-affairs-office-speak-extradition-bill>.

55 SCMP Reporters, *Hong Kong's Government and Police 'Completely Capable' of Protecting Law and Order, Key Beijing Official Says, Ruling out Need for PLA to be Mobilized*, SOUTH CHINA MORNING POST (Aug. 6, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3021584/will-beijing-press-briefing-offer-way-defuse-hong-kongs>.

rhetoric to accusations of a “color revolution” on August 8,⁵⁶ “signs of terrorism” on August 12,⁵⁷ and “political terror” on September 3.⁵⁸

Beijing officials from Xi on down urged the Hong Kong police to “punish violent and unlawful acts” and praised their “forceful actions” against “rioters.”⁵⁹ The Hong Kong’s police, once “Asia’s finest,” quickly became “just another mainland force” acting with impunity.⁶⁰ Police abuses on June 9 were just the beginnings. When Beijing’s warnings did not deter protesters, the authorities’ plan was to “arrest as many as possible... until there [was] nobody left (拉得幾多得幾多，拉到無人為止).”⁶¹ Moreover, as Hong Kong’s judiciary was still relatively autonomous and many of the arrested were not expected to be convicted or sentenced, the police resorted to a decapacitation campaign

56 Kris Cheng, *Beijing Deems Hong Kong Protests ‘Colour Revolution,’ Will Not Rule out Intervention*, HONG KONG FREE PRESS (Aug. 8, 2019), <https://www.hongkongfp.com/2019/08/08/beijing-deems-hong-kong-protests-colour-revolution-will-not-rule-intervention/>.

57 Sarah Zheng, *Beijing Warns of ‘Signs of Terrorism’ in Violent Unrest in Hong Kong*, SOUTH CHINA MORNING POST (Aug. 12, 2019), <https://www.scmp.com/news/china/politics/article/3022438/beijing-warns-signs-terrorism-violent-unrest-hong-kong>.

58 SCMP Reporters, *As It Happened: All Branches of Government, Including Judiciary, Must Help Stop Violence and Restore Order; Says Beijing’s Top Hong Kong Office*, SOUTH CHINA MORNING POST (Sept. 3, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3025479/beijings-top-office-hong-kong-affairs-holds-fourth-press>.

59 Laura Zhou, *Xi Jinping Again Backs Hong Kong Police Use of Force in Stopping Unrest*, SOUTH CHINA MORNING POST (Nov. 14, 2019), <https://www.scmp.com/news/china/politics/article/3037811/xi-jinping-again-backs-hong-kong-police-use-force-stopping>.

60 Chris Yeung, *HK Police Now Just Another Mainland Force*, VOICE OF HONG KONG (Aug. 13, 2019), <http://www.vohk.hk/2019/08/13/hk-police-now-just-another-mainland-force/>.

61 Sha Boon Shan (沙半山), *Xiaoxi: Zhengfu Buhui Dayun Wudasuqiu*, “Xiaohaozhan” *Kangheng Shiweizhe* (消息：政府不會答允五大訴求 「消耗戰」抗衡示威者) [Sources: Government Would Not Agree to Five Demands, Using “War of Attrition” to Counter Protesters], HK01 (香港01) (Aug. 27, 2019), <https://www.hk01.com/政情/368236/政團風聲-消息-政府不會答允五大訴求-消耗戰-抗衡示威者>.

to inflict maximizing injuries on protesters short of outright killing. They regularly fired tear gas, rubber bullets, beanbag rounds, and water cannons at high velocity, at head level, and at close range, so that even technically non-lethal crowd-control weapons caused severe injuries.⁶² At the same time, the police minimized protesters' access to medical treatment by blocking first responders and ambulances at protest sites and rounding up suspected protesters at hospitals. After August 11, 2019, police officers routinely beat up the arrested with batons, pinned them down and rubbed their faces against the ground, pepper-sprayed their wounds, and broke their bones.⁶³ Officers even fired live ammunition with near-fatalities on October 1 and November 11.

Chris Tang, immediately after his promotion to police chief in November 2019, assumed command of an assault on protesters at Hong Kong Polytechnic University. Hong Kong analysts suspect that he had a deliberate strategy to lure hardcore protesters to “defend” Polytechnic and then arrest them.⁶⁴ In this single operation, the police detained 1,377 and registered 318 below the age of 18.⁶⁵ When supporters poured into nearby areas to divert the police, police vehicles rammed

62 K.K. Rebecca Lai & Austin Ramzy, *1,800 Rounds of Tear Gas: Was The Hong Kong Police Response Appropriate?*, N.Y. TIMES (Aug. 18, 2019), <https://www.nytimes.com/interactive/2019/08/18/world/asia/hong-kong-tear-gas.html>.

63 Barbara Marcolini, *Police Dressed as Protesters: How Undercover Police in Hong Kong Severely Injured People*, N.Y. TIMES (Sept. 22, 2019), <https://www.nytimes.com/2019/09/22/world/hong-kong-police-protests.html>.

64 Chi-kin Lo (盧子健), *Zhizao Lida Canan Suowei Heshi? (製造理大慘案、所為何事?) [What Was the Purpose for Manufacturing the Polytechnic Tragedy?]*, HONG KONG CITIZEN NEWS (眾新聞) (Nov. 19, 2019), <https://www.hknews.com/article/24918/圍困理工-1117理工衝突-鄧炳強-24918/製造理大慘案、所為何事>.

65 *A Total of over 10,000 Petrol Bombs Seized from Various Universities, 4000 from Poly U, 5,890 Protesters Arrested since June*, DIMSUM DAILY HONG KONG (Nov. 29, 2019), <https://www.dimsumdaily.hk/a-total-of-over-10000-petrol-bombs-seized-from-various-universities-4000-from-poly-u-5890-protesters-arrested-since-june/>.

them at high speed, causing a stampede with traumatic injuries.⁶⁶ In detention centers, especially the infamous San Uk Ling Holding Center, the arrested were denied access to families and lawyers for hours.⁶⁷ They also complained of torture resulting in bone fractures and brain bleeding,⁶⁸ even sexual assault.⁶⁹ In mid-August, doctors and nurses, who saw first-hand the severity of injuries, staged sit-ins with the slogan “Hong Kong police attempt to murder Hong Kong citizens.”⁷⁰

If there is any doubt as to who is in charge in the crackdown, events surrounding the Yuen Long incident on July 21, 2019 are instructive. At the suburban train station, white-clad assaulters armed with wooden sticks and metal rods indiscriminately attacked rail commuters and

66 Kris Cheng, *Hong Kong Police Accused of Driving Vehicles into Protesters during Clearance Operation*, HONG KONG FREE PRESS (Nov. 19, 2019), <https://www.hongkongfp.com/2019/11/19/hong-kong-police-accused-driving-vehicles-protesters-clearance-operation/>.

67 Kanis Leung, *Arrest and Detention of Children over Hong Kong's Anti-Government Protests Raise Questions on Police Treatment and Legal Process*, SOUTH CHINA MORNING POST (Oct. 20, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3033706/arrest-and-detention-children-over-hong-kongs-anti>.

68 *Hong Kong: Arbitrary Arrests, Brutal Beatings and Torture in Police Detention Revealed*, AMNESTY INTERNATIONAL (Sept. 19, 2019), <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>; MICHAEL C. DAVIS & THOMAS E. KELLOGG, *THE PROMISE OF DEMOCRATIZATION IN HONG KONG, DISCONTENT AND RULE OF LAW CHALLENGES*, GEORGETOWN CENTER FOR ASIAN LAW (Apr. 2020), https://www.ndi.org/sites/default/files/Final_04.11.20_The%20Promise%20of%20Democratization%20in%20Hong%20Kong.pdf.

69 Chris Lau, *Hong Kong Student Who Accused Police of Sexual Violence Against Protesters Has Taken Legal Advice and Plans Further Action*, SOUTH CHINA MORNING POST (Oct. 11, 2019), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3032610/hong-kong-student-who-accused-police-sexual-violence>.

70 Kimmy Chung & Elizabeth Cheung, *More than 1,000 Health Care Staff Stage Sit-In to Condemn 'Excessive Use of Force' by Hong Kong Police on Anti-government Protesters*, SOUTH CHINA MORNING POST (Aug. 13, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3022650/more-1000-health-care-staff-stage-sit-condemn-excessive-use>.

pedestrians. The police did not show up until the thugs had left. Senior officers were filmed speaking with the men in white shirts prior to the attacks. A pro-regime legislator, Junius Ho, was seen shaking hands with gang leaders. These encounters led to suspicions that the police were colluding with the attackers.⁷¹ When the then Chief Secretary Matthew Cheung, second in command to Carrie Lam, apologized that “the police’s handling [of the Yuen Long incident] fell short of the residents’ expectations,” he was publicly rebuked by the Police Inspectors’ Association.⁷² One anonymous statement read: “Matthew Cheung, why do you deserve to represent the police force? If you want to apologise, you should resign. If you don’t step down or apologise to the whole force, you will be a sworn enemy of the police!”⁷³ (Chris Tang, then the Yuen Long district commander, became the police commander on November 19, 2019, before further promotion to be the Secretary for Security in June 2020; his then Chief of Police boss, John Lee was promoted to Chief Secretary, the number two position in the Hong Kong government, before being further tipped as Beijing’s choice for the next Chief Executive in 2022.⁷⁴)

71 Lok-kei Sum, *Hong Kong Police Chief Tangles with Opposition Councillors for Second Time in Week over Force’s Handling of Protests*, SOUTH CHINA MORNING POST (Jan. 22, 2020), <https://www.scmp.com/news/hong-kong/politics/article/3047251/hong-kong-police-chief-tangles-opposition-councillors>.

72 Christy Leung & Victor Ting, *Police Anger after Hong Kong No 2 Matthew Cheung Says Sorry for Yuen Long Attack Response*, SOUTH CHINA MORNING POST (July 26, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3020251/hong-kong-no-2-matthew-cheung-says-sorry-police-response>.

73 Holmes Chan, *Hong Kong’s Chief Sec. Apologises over Handling of Yuen Long Attacks, Stirring Dissent from Police*, HONG KONG FREE PRESS (July 26, 2019), <https://hongkongfp.com/2019/07/26/hong-kongs-chief-sec-apologises-handling-yuen-long-attacks-stirring-dissent-police/>.

74 In the same reshuffle, Cheung was retired. Donny Kwok, *Hong Kong’s Police Chief, Security Secretary to be Promoted-Report*, REUTERS (June 25, 2021), <https://www.reuters.com/world/asia-pacific/hong-kongs-police-chief-security-secretary-be-promoted->

The police targeted not only protesters, but also reporters, social workers, and elected councilors who might provide assistance to protesters by virtue of performing their professional duties to report on police abuses, mediate between the police and protesters, and offer legal counsel.⁷⁵ Media and civic organizations, both international and local, compiled mountains of reports on police brutality.

The authorities highlight that there was unprecedented violence on the part of protesters. In Hong Kong as elsewhere in the world, state repression, thuggish violence and police brutality contributed to escalation and radicalization. On July 1, 2019, hundreds stormed into the Legislative Council building. On July 21, protesters defaced the national emblem outside Beijing’s Liaison Office. There was much uneasiness among moderates about violent actions even against properties. However, any reservation was overshadowed by the indiscriminate attacks by thugs in apparent collusion with the police in Yuen Long also on July 21. Carrie Lam’s unresponsiveness to the massive showing of the popular will generated much sympathy for the slogan “It is [you] who taught us that peaceful demonstration is ineffective.”⁷⁶

To further push the developing trend of radicalization, the authorities increasingly closed off nonviolent means of expressing dissent. After August 18, 2019, the police routinely refused to issue “no-objection notices” to organizers, thereby rendering protests “unlawful” and subjecting protesters to arrests. Throughout the summer,

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⁷⁵ See Victoria Tin-bor Hui, *Beijing’s Hard and Soft Repression in Hong Kong*, 64 *ORBIS* 289 (2020).

⁷⁶ Victoria Tin-bor Hui, *Beijing’s All-Out Crackdown on the Anti-Extradition Protests in Hong Kong*, *CHINA LEADERSHIP MONITOR* (Dec. 1, 2019), <https://www.prcleader.org/victoria-hui>.

Hongkongers formed human chains, sang the protest anthem “Glory to Hong Kong” in shopping malls, staged flash gatherings, put up giant slogans on mountain tops and buildings, and posted sticky notes and public art on “Lennon Walls.” These peaceful displays of the five demands were subject to the same risks as “unlawful assemblies.” Moreover, many of the artworks were destroyed as quickly as they were put up. Make-shift memorials for those who died in suspicious circumstances were likewise readily demolished. Hongkongers also engaged in strikes and boycott. However, Beijing equated nonviolent democracy protests with color revolutions and regime change. The *China Daily*, for example, stated that the “nonviolent approaches” show “common elements of color revolutions,” which “include strong specific political demands, interference by external forces, attempts to motivate the public, social standoffs and turmoil,... and pursuit of a power transfer.”⁷⁷ HKMAO condemned the general strikes on August 5 as “radical violations of public order and laws, challenging the bottom lines of ‘One Country, Two Systems’ and national dignity.”⁷⁸ Another spokesman lashed out at the strikes as well because they were intended to “paralyze the Hong Kong government, seize power for governing the [city] and make ‘one country, two systems’ an empty concept.”⁷⁹

Given that Beijing’s understanding of “One Country, Two Systems” had no tolerance for either violent or nonviolent resistance and that violence helped to justify a hard crackdown, it may make sense why uniformed police committed much of the atrocities in plain view of live-

77 Yunbi Zhang, *HK ‘Color Revolution’ Signs Seen*, CHINA DAILY (Sept. 6, 2019), www.chinadaily.com.cn/a/201909/06/WS5d71ac70a310cf3e3556a085.html.

78 See SCMP Reporters, *supra* note 55.

79 See Zhang, *supra* note 77.

streaming professional and citizen cameras.⁸⁰ It is often argued that police brutality backfires, but it is not a backfire if the police intended to incite violent reactions.⁸¹ With police atrocities making a sharp uptake from August 11 on (see above), protesters went from throwing bricks and water bottles at officers to making firebombs, stabbing officers, meting out vigilante justice to regime supporters, and setting fire to pro-Beijing businesses and train stations.⁸² This violent turn then opened up the opportunity for agent provocateurs to flame the “riots” and “terrorist acts.” People looking like vandals were repeatedly filmed identifying themselves as “our own people” to uniformed officers and then being escorted away.⁸³ As images of masked black-clad people emerged from burning shops and train stations, it was difficult to sort out who was a protester and who was in disguise.

⁸⁰ See Hui, *supra* note 17.

⁸¹ See Hui, *supra* note 76.

⁸² Victoria Tin-bor Hui, *Hong Kong Citizens Just Voted for More Democracy. What Happens Now?*, WASH. POST (Nov. 26, 2019), <https://www.washingtonpost.com/politics/2019/11/26/hong-kong-citizens-just-voted-more-democracy-what-happens-now/>.

⁸³ LOU, “*Heijing Ban Shiweizhe Tiezheng 3*” *Qiaozhuang Jing Tuizhuang Jizhe Han “Zijiren” Jihuo Sulong Yanhu Cheli* (《黑警扮示威者鐵證3》喬裝警推撞記者喊「自己人」即獲速龍掩護撤離) [*Police Dressed as Protester Pushed Reporter and Called Out “Our Own People”*], YOUTUBE (Sept. 29, 2019), www.youtube.com/watch?v=6MYxOGkR_9I&feature=share&fbclid=IwAR1aex3luZzc6h0IISLwRPIXurCo0CdZu-7KugOMkFRfO9Hlu8UM7CfVFM; *Person Dressed as Protester Vandalized the Yaumatei-Tsimshatsui Police Station and Ran Inside*, FACEBOOK (Oct. 20, 2019), www.facebook.com/FixingHK/photos/a.608452522619273/1746011145530066/?type=3&theater. (This piece has been erased from the site. The link represents what it was.)

III. The Axe Comes Down

By the end of 2019, street confrontations yielded to nonviolent actions. Frontline protesters had suffered high attrition with over 7,000 arrests and thousands of injuries. The pro-democracy camp turned to more sustainable actions than confronting riot police. A “yellow economic circle” was created to connect pro-democracy “yellow businesses” and customers, and employers and employees, and, at the same time, to boycott pro-regime “blue businesses.” Various professions formed new unions so as to launch more effective strikes in the future. Most of all, pro-democracy candidates who campaigned on the 5 protest demands won in a landslide in the District Council elections on November 24, capturing 388 out of 452 seats and dominating 17 of 18 District Councils.⁸⁴ The pro-democracy camp was emboldened by these electoral victories to strategize to win “35 + 1” out of 70 seats in the Legislative Council elections slated for September 2020.⁸⁵ This would give them a majority in the Legislative Council.

Yet, Beijing was already sharpening its axe. On November 1, 2019, the Fourth Plenum of the 19th Central Committee of the Communist

84 *Feijianzhipai Ying 388xi Dasheng* (非建制派贏388席大勝) [The Non-Establishment Camp Won Major Victories with 388 Seats], HKEJ (信報財經新聞) (Nov. 25, 2019), [https://www2.hkej.com/instantnews/current/article/2311686/\[區選\]非建制派贏388席大勝](https://www2.hkej.com/instantnews/current/article/2311686/[區選]非建制派贏388席大勝) [<https://perma.cc/HC3K-84UE>]; Jason Poon (潘焯鴻), *2019 Quyihui Xuanjude Chenggong Zhide Xiyue?* (2019區議會選舉的成功值得喜悅?) [*Victories in 2019 District Council Elections Deserve Joy?*], INDEPENDENT MEDIA (獨立媒體), (Nov. 26, 2019), <https://www.inmediahk.net/node/1068977>.

85 Zoe Low, *Hong Kong National Security Law: A 35-plus Ambition, ‘Colour Revolution’ and the ‘Resistance’ — What Led to Biggest Mass Arrests under Legislation?*, SOUTH CHINA MORNING POST (Jan. 6, 2021), <https://www.scmp.com/news/hong-kong/politics/article/3116586/hong-kong-national-security-law-35-plus-ambition-colour>.

Party formally announced that it would “exercise governance” in Hong Kong.⁸⁶ It also called for national security legislation, patriotic education and other measures to end the turmoil. In early 2020, Beijing appointed senior-ranked hardline leaders, Xia Baolong and Luo Huining, to head HKMAO in Beijing and the Liaison Office in Hong Kong, respectively.

Luo Huining wasted no time to declare that the opposition would never be allowed to take over half of the seats to “seize governance power.”⁸⁷ Carrie Lam announced that a coordinated effort by democrats to win a majority in the legislature with “the ultimate goal” of “rejecting, resisting every policy initiative” of the government would count as subversion.⁸⁸ Despite — or because of — the warnings, over 610,000 turned out at an informal primary to coordinate candidate choices in July 2020. Convinced that pro-Beijing candidates were certain to lose to pro-democracy ones even in restricted and manipulated elections, the authorities disqualified 12 pro-democracy candidates and postponed the elections. The National Security Police arrested 53 involved with the primary in January and formally charged 47 among them in February 2021, with the court denying bail to most except 14. More opposition

86 *Zhongguo Gongchandang 19th Sizhongquanhui Xinwen Fabuhui* (中國共產黨十九屆四中全會新聞發布會) [*Press conference of the Fourth Plenum of the 19th Central Committee of the Chinese Communist Party*], THE PEOPLE’S REPUBLIC OF CHINA (Nov. 1, 2019), http://www.gov.cn/xinwen/2019-11/01/content_5447495.htm.

87 *Luo Huining Shouwu Shetuan Cheng Fanduipai Bukeng Duoqu Quanzhiquan* (駱惠寧首晤社團 稱反對派不可能奪取管治權) [*Luo Huining Met Social Groups, Claimed that the Opposition Could Not Seize governance power*], NOW NEWS (Feb. 21, 2020), <https://news.now.com/home/local/player?newsId=381522&fbclid=IwAR2NunjGKahPx1Skq9kKUic0x6kW54e-bOVcG70l82qFhmuAX82gH8Ynjys>.

88 Frank Ching, *Hong Kong: National Security Law Likely to Tip Election Scales*, MANILA TIMES (July 21, 2020), <https://www.manilatimes.net/2020/07/21/opinion/columnists/hong-kong-national-security-law-likely-to-tip-election-scales/743785>.

leaders have been arrested, and independent media and civil society organizations shut down.⁸⁹ When elections were held in December 2021, only “patriots” were allowed to run under new electoral rules. The “One Country, Two Systems” model is being buried deeper and deeper in the NSL era.

IV. “One Country, Two Economic Systems”?

It would be a mistake to think that even if “One Country, Two Political Systems” is dead, “One Country, Two Economic Systems” has stayed on. Beijing is tearing down remaining differences between the two economic systems as well. The Heritage Foundation dropped Hong Kong from its Index of Economic Freedom in 2021 because “the loss of political freedom and autonomy suffered by Hong Kong over the past two years has made that city almost indistinguishable in many respects from other major Chinese commercial centers like Shanghai and Beijing.”⁹⁰ The Hong Kong Association of Banks advised its members, both local and international, to disclose property held by any client who is arrested or charged under the NSL.⁹¹ The pro-democracy newspaper *Apple Daily*’s bank accounts were frozen to force its abrupt closure in

⁸⁹ Rhoda Kwan, *Explainer: Over 50 Groups Disband — How Hong Kong’s Pro-democracy Forces Crumbled*, HONG KONG FREE PRESS (Nov. 28, 2021), <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>.

⁹⁰ Edwin J. Feulner, *Hong Kong Is No Longer What It Was*, HERITAGE FOUNDATION (Apr. 5, 2021), <https://www.heritage.org/asia/commentary/hong-kong-no-longer-what-it-was>.

⁹¹ Kane Wu, *Hong Kong Banks to Disclose Related Property of Clients Who Breach Security Law*, REUTERS (Oct. 24, 2021), <https://www.reuters.com/world/asia-pacific/hong-kong-banks-disclose-related-property-clients-who-breach-security-law-2021-10-24/>.

June 2021.⁹² HSBC particularly stands out in facilitating Beijing’s efforts to “undermine democratic freedoms in Hong Kong.”⁹³ It openly declared its support for the NSL and froze accounts of prodemocracy individuals and entities, including self-exiled legislator Ted Hui and his family, pastor Ray Chan and the Good Neighbour North District Church.⁹⁴ HSBC has further followed the government requirement to refuse to recognize the British National (Overseas) passport as documentation for withdrawing pensions — of importance to Hongkongers who choose to flee the city.⁹⁵ Google, an American multinational, handed over user data to the Hong Kong authorities

⁹² Anne Marie Roantree, *HK’s Apple Daily to Shut within Days, Says Jimmy Lai Adviser*, REUTERS (June 21, 2021), <https://www.reuters.com/business/retail-consumer/exclusive-adviser-jailed-hk-tycoon-jimmy-lai-says-apple-daily-shut-within-days-2021-06-21/>; Greg Torode, James Pomfret & Sumeet Chatterjee, *Hong Kong Threatens Lai’s Bankers with Jail if They Deal in His Accounts*, REUTERS (May 27, 2021), <https://www.reuters.com/world/china/exclusive-hong-kong-security-chief-threatens-tycoon-lais-bankers-with-jail-if-2021-05-27/>.

⁹³ Congressional-Executive Commission on China, *Commissioners Ask Whether HSBC Is Undermining Democratic Freedoms in Hong Kong* (Mar. 3, 2022), <https://www.cecc.gov/media-center/press-releases/cecc-commissioners-ask-whether-hsbc-is-undermining-democratic-freedoms>.

⁹⁴ Alison Tudor-Ackroyd & Chad Bray, *What HSBC and Cathay Pacific’s Bow to Beijing on Hong Kong National Security Law Tells Investors about Management in Political Crises*, SOUTH CHINA MORNING POST (June 9, 2020), <https://www.scmp.com/business/companies/article/3088056/what-hsbc-and-cathay-pacifics-bow-beijing-hong-kong-national>; Reuters staff, *Former Hong Kong Lawmaker Rejects HSBC’s Explanation over Frozen Accounts*, REUTERS (Jan. 18, 2021), <https://www.reuters.com/article/us-hongkong-hsbc/former-hong-kong-lawmaker-rejects-hsbcs-explanation-over-frozen-accounts-idUSKBN29N0HP>; Candice Chau, *Hong Kong Church Says HSBC Account Frozen ‘in Retaliation’ for Helping Protesters Last Year*, HONG KONG FREE PRESS (Dec. 8, 2020), <https://hongkongfp.com/2020/12/08/hong-kong-church-says-hsbc-account-frozen-in-retaliation-for-helping-protesters-last-year/>.

⁹⁵ Laura Mannering, *Banks Accused of Beijing-Backed ‘Asset Grab’ as Hongkongers in UK Denied Access to Pension Savings*, HONG KONG FREE PRESS (July 7, 2021), <https://hongkongfp.com/2021/07/04/banks-accused-of-beijing-backed-asset-grab-as-hongkongers-in-uk-denied-access-to-pension-savings/>.

despite an earlier pledge to the contrary.⁹⁶ Beijing also has a plan to introduce a Hong Kong version of an anti-sanctions law which would make it impossible for international businesses to comply with US sanctions requirements.⁹⁷

It may seem that Beijing has successfully achieved its goal of “capitalism without freedom,” killing Hong Kong’s preexisting rights and the rule of law while keeping its international financial status. But this is mistaking correlation for causation. If international businesses stay in Hong Kong, it is because they are also heavily invested in the China market so that it does not matter that Hong Kong has become like the rest of China. Hong Kong will continue to look like “business as usual” so long as international investors continue to see profit-making opportunities in China. Yet, the cost-benefit calculation is changing as Xi Jinping’s imposition of an ideological zero-covid policy in Hong Kong is driving an exodus. Xi’s efforts to rein in China’s own tech and property giants have also sent shock waves through global markets. The Hong Kong economy is now so mainlandized that its fate is irretrievably tied to whatever happens in the rest of China.

⁹⁶ Sebastian Moss, *Google Handed over User Data to the Hong Kong Government — Claims there Was a Credible Threat to Human Life*, DATA CENTER DYNAMICS (Sept. 13, 2021), <https://www.datacenterdynamics.com/en/news/google-handed-over-user-data-to-the-hong-kong-government/>; Katie Paul, *U.S. Tech Giants Suspend Review of Hong Kong Data Requests, TikTok to Pull out*, REUTERS (July 6, 2020), <https://www.reuters.com/article/us-facebook-whatsapp-law-hongkong/u-s-tech-giants-suspend-review-of-hong-kong-data-requests-tiktok-to-pull-out-idUSKBN2471E7>.

⁹⁷ Chris Lau, *Beijing’s Anti-Sanctions Law for Hong Kong: Why Is It Being Postponed? What Do We Know and Don’t Know about the Delay?*, SOUTH CHINA MORNING POST (Aug. 21, 2021), <https://www.scmp.com/news/hong-kong/politics/article/3145857/anti-sanctions-law-hong-kong-look-lead-beijings-surprise>.

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