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Unpalatable Realities, No Choices

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Albert H.Y. Chen, The Changing Legal Orders in Hong Kong and Mainland China. City University of Hong Kong Press, 2021. Pp. 400. ISBN: 978-9629374501

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On 30 June 2020, the National People's Congress Standing Committee ("NPCSC") unanimously passed a "National Security Law" ("NSL")¹ in respect of the Hong Kong Special Administrative Region.² The contents of the NSL remained secret until promulgation; as of May 2021, there is still no officially binding English text. Its 66 articles create poorly-defined offences³ of (among other things) "subversion," "separatism," and "collusion with foreign powers" to induce Hong Kongers to despise the Beijing or Hong Kong governments,⁴ criminalising a broad range of conduct that would be recognised elsewhere as ordinary civic and political participation. It imposes not one but two separate state security apparatuses on the territory – one made up of carefully selected Hong Kong police, prosecutors, and judges; the other of the Mainland's own state security agents.⁵ Despite a cursory reference in article 4 to the protection of

1 See *Bilingual Hong Kong National Security Law*, CHINA LAW TRANSLATE, <https://www.chinalawtranslate.com/bilingual-hong-kong-national-security-law/> (last visited May 20, 2021) (unofficial English translation); *The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region*, The Government of the Hong Kong Special Administrative Region Gazette (Jun. 2020) (non-binding gazetted English translation), <https://www.gld.gov.hk/egazette/english/gazette/volume.php?year=2020&vol=24&no=44&extra=1>.

2 See generally Carole J. Petersen, *The Disappearing Firewall: International Consequences of Beijing's Decision to Impose a National Security Law and Operate National Security Institutions in Hong Kong*, 50 H.K.L.J. 633 (2020).

3 *Id.* at 649–52.

4 It appears that the Hong Kong government needs little external assistance to generate public antipathy: see *Carrie Lam Scores 29 Marks in Popularity, Along with a 72pc Disapproval Rate*, STANDARD (Jan. 12, 2021), <https://www.thestandard.com.hk/breaking-news/section/4/163228/Carrie-Lam-scores-29-marks-in-popularity,-along-with-a-72pc-disapproval-rate>.

fundamental rights,⁶ the remainder of the text makes plain that – by design – neither security apparatus will be subject to meaningful legal or democratic accountability to any institution within Hong Kong. More significantly, its reach is not confined by territory or residency status:⁷ officials have already threatened to use the NSL against Danish politicians⁸ and members of the Hong Kong diaspora.⁹ Only a highly imaginative reading of the NSL would provide much grounds for optimism.¹⁰

Beijing's imposition of the NSL marked the effective end of the rights and freedoms ostensibly guaranteed to Hong Kongers under the "One Country, Two Systems" ("OCTS") model of devolved government.¹¹ Under the Sino-British Joint Declaration of 1984, the former British colony was supposed to enjoy a "high degree of autonomy" in all areas of governance except for foreign affairs and defence from 1997 (when Hong Kong returned to Chinese sovereignty) until 2047;¹² these guarantees were ostensibly underwritten by the Basic Law, Hong Kong's constitutional instrument.¹³ Specific commitments in the Joint Declaration and Basic Law include the retention of judicial independence,¹⁴ the continued protection of rights enshrined in the International Covenant of Civil and Political Rights,¹⁵ and (eventually) the election of the Chief Executive, and *all* members of the Legislative Council,¹⁶ by universal suffrage.¹⁷ One

5 See, e.g., Jeremy Daum, *Insecurity Law*, CHINA LAW TRANSLATE (Jul. 1, 2020), <https://www.chinalawtranslate.com/insecurity-law/>.

6 *Bilingual Hong Kong National Security Law*, *supra* note 1, art. 4.

7 Petersen, *supra* note 2, at 653–54.

8 Sebastian Skov Andersen, *Meet the Danish Politicians Wanted by Hong Kong for Helping Lawmaker Ted Hui Flee the City*, HONG KONG FREE PRESS (Jan. 24, 2021), <https://hongkongfp.com/2021/01/24/meet-the-danish-politicians-wanted-by-hong-kong-for-helping-lawmaker-ted-hui-flee-the-city/> (last visited May 6, 2021).

9 Kang-chung Ng, *Activists Overseas Launch 'Hong Kong Charter' Aimed at Pressuring Beijing*, S. CHINA MORNING POST (Mar. 15, 2021), <https://www.scmp.com/news/hong-kong/politics/article/3125493/activists-overseas-launch-new-hong-kong-charter-aimed>.

10 See, e.g., Jonathan Sumption, *Britain Should Avoid Undermining the Hong Kong Judiciary*, TIMES (Mar. 18, 2021), <https://www.thetimes.co.uk/article/britain-should-avoid-undermining-the-hong-kong-judiciary-2j7nmft5d>.

11 See generally YASH GHAI, *HONG KONG'S NEW CONSTITUTIONAL ORDER: THE RESUMPTION OF CHINESE SOVEREIGNTY AND THE BASIC LAW* (2nd ed. 1999) (the seminal text on Hong Kong's post-1997 constitutional order).

12 *Joint Declaration on the Question of Hong Kong, China-U.K.*, 1399 U.N.T.S. 33 (in particular Article 3 and Annex I).

13 Basic Law of the Hong Kong Special Administrative Region.

14 *Joint Declaration* 33 (Annex I); Basic Law, art. 85.

15 *Joint Declaration* 33 (Annex I); Basic Law, art. 39.

16 See *infra* on the role of "functional constituencies" in the Legislative Council.

17 Basic Law, arts. 45, 68.

element, however, was conspicuously absent. Hong Kong's own population was scarcely consulted, let alone involved, in negotiating these arrangements¹⁸ – a recurring feature in the territory's history.¹⁹

Even before the NSL, fault lines had begun to show in OCTS.²⁰ Beijing repeatedly delayed, and ultimately ruled out, fully democratic elections for the Legislative Council and Chief Executive.²¹ The result was a legislature with half of its seats chosen by designated special interest groups (referred to as “functional constituencies”),²² and a Chief Executive chosen by an “Election Committee” carefully curated by Beijing.²³ Nor was the judiciary exempt from Beijing's predations. By 2016, the NPCSC had used its power to “interpret” the Basic Law²⁴ five times – only once at the behest of Hong Kong's own Court of Final Appeal (“CFA”); two such “interpretations” were made with the specific purpose of pre-empting litigation in Hong Kong.²⁵ Faced with ever-dwindling jurisdiction and (in the case of judges not of Chinese descent) overtly racist attacks,²⁶ Hong Kong judges began to engage in a pattern of strategic

18 See GHAI, *supra* note 11; Alvin Y. H. Cheung, *Road to Nowhere: Hong Kong's Democratization and China's Obligations Under Public International Law*, 40 BROOK. J. INT'L L. 465, 478–79 (2015).

19 Some analysts and scholars continue, in writing about Hong Kong, to disregard whatever views the territory's own population might actually hold: see Alvin Y.H. Cheung, *Hong Kong: The End of Delusion*, CRITICAL ASIAN STUDIES COMMENTARY (Feb. 8, 2021), <https://doi.org/10.52698/URUL3385>.

20 See generally Cora Chan, *Thirty Years From Tiananmen: China, Hong Kong, and the Ongoing Experiment to Preserve Liberal Values in an Authoritarian State*, 17 INT'L J. OF CONST. L. 439 (Jun. 2019).

21 See generally Cheung, *supra* note 18; Michael Davis, *The Basic Law, Universal Suffrage and the Rule of Law in Hong Kong*, 38 HASTINGS INT'L & COMP. L. REV. 275 (Jan. 2015).

22 See, e.g., GHAI, *supra* note 11, at 259–62; Cheung, *supra* note 18, at 481–86.

23 See, e.g., Cheung, *supra* note 18; Davis, *supra* note 21.

24 Basic Law art. 158.

25 CS Makes Statement on Term of Office of New CE, INFO.GOV.HK, <https://www.info.gov.hk/gia/general/200504/06/04060181.htm> (Apr. 6, 2015) (specifically noting imminent litigation); Alvin Y. H. Cheung, *Crisis Averted? Foreign Domestic Helpers, the Basic Law and Hong Kong's Court of Final Appeal*, I-CONNECT – BLOG OF THE JOURNAL OF INTERNATIONAL CONSTITUTIONAL LAW (Apr. 13, 2013), <http://www.iconnectblog.com/2013/04/crisis-averted-foreign-domestic-helpers-the-basic-law-and-hong-kongs-court-of-final-appeal/> (on 2005 “interpretation”); Cora Chan, *Legal Limits on Beijing's Powers of Interpretation?*, I-CONNECT – BLOG OF THE JOURNAL OF INTERNATIONAL CONSTITUTIONAL LAW (Nov. 5, 2016), <http://www.iconnectblog.com/2016/11/legal-limits-on-beijings-powers-of-interpretation/> (on 2016 “interpretation” that effectively dictated an outcome to a Hong Kong court); P.Y. Lo, *Two Kinds of Unconstitutional Constitutional Interpretations in China's Hong Kong*, I-CONNECT – BLOG OF THE JOURNAL OF INTERNATIONAL CONSTITUTIONAL LAW (Dec. 23, 2016), <http://www.iconnectblog.com/2016/12/two-kinds-of-unconstitutional-constitutional-interpretations/> (on 2016 “interpretation”).

26 See Alvin Y.H. Cheung, *Hong Kong: Race-Baiting the Judiciary*, LOWY INTERPRETER, <https://www.lowyinstitute.org/the-interpreter/hong-kong-race-baiting-judiciary> (Feb. 9, 2018) (listing specific

retreat (*China's National Security*, pp. 144–48) – an overture that Beijing did not reciprocate.²⁷ The cumulative effect was a vicious cycle of mistrust between Chinese political leadership and a substantial portion of the Hong Kong public.²⁸

Events came to a head in 2019, when the Hong Kong government proposed a bill that would, among other things, facilitate the rendition of fugitives from Hong Kong to Mainland China (*Changing Legal Orders*, pp. 118–29).²⁹ That bill (“the rendition bill”) prompted widespread alarm from the legal profession, businesses, and the general public. After large-scale protests on two consecutive weekends, Chief Executive Carrie Lam belatedly declared she would suspend the rendition bill; months later she would withdraw it completely, following complaints that legislative process could be revived.³⁰ By then, however, the damage had been done: faced with the Hong Kong government’s abject lack of credibility, Beijing decided to impose more direct rule in the form of the NSL.

The authorities have not been slow to exploit the post-NSL constitutional order. As of May 2021, 113 people have been arrested by the Hong Kong Police Force’s National Security Department;³¹ they include 47 pro-democracy politicians charged under the NSL for the heinous offence of organising, or participating in, a political primary.³² On 16 April, 9 major political figures – including barristers Martin Lee QC and Margaret Ng – were given sentences ranging from suspended sentences to 18 months’

examples).

27 See, e.g., Alvin Y.H. Cheung, *The Hong Kong Judiciary and Beijing’s Temper Tantrum*, VERFASSUNGSBLOG (Nov. 22, 2019), <https://verfassungsblog.de/the-hong-kong-judiciary-and-beijings-temper-tantrum/> (on a nuanced attempt at restraint by the Court of First Instance in connection with a ban on facial coverings imposed under the Emergency Regulations Ordinance, and the vitriolic reaction by pro-Beijing actors).

28 See, e.g., Chan, *supra* note 20, at 444–45.

29 See also Johannes Chan, *Ten Days That Shocked the World: The Rendition Proposal in Hong Kong*, 49 H.K.L.J. 431 (2019); Cora Chan, *Demise of “One Country, Two Systems”? Reflections on the Hong Kong Rendition Saga*, 49 H.K.L.J. 447 (2019).

30 *Hong Kong Extradition Bill Officially Killed, but Move Unlikely to End Unrest*, SBS NEWS, <https://www.sbs.com.au/news/hong-kong-extradition-bill-officially-killed-but-move-unlikely-to-end-unrest> (Oct. 23, 2019).

31 Tom Kellogg & Lydia Wong, *New Data Show Hong Kong’s National Security Arrests Follow a Pattern*, CHINAFILE, <https://www.chinafile.com/reporting-opinion/features/new-data-show-hong-kongs-national-security-arrests-follow-pattern> (May 3, 2021).

32 *Id.*

imprisonment for organising and participating in a peaceful, albeit unauthorised, assembly. On the same day, Police Commissioner Chris Tang threatened criminal investigations into journalists who disseminated “fake news” in collaboration with foreign governments, in apparent retaliation against the publication of photographs – which appear to be genuine – of schoolchildren playing with firearms provided by the police as part of “National Security Education Day.”³³ Despite increasingly desperate attempts to normalise the situation,³⁴ it is plain that the “second system” in Hong Kong is now – like the legal system in Mainland China – a dual state.³⁵

China’s rapid dismemberment of Hong Kong’s legal and constitutional framework is the backdrop against which both *China’s National Security: Endangering Hong Kong’s Rule of Law?* (“China’s National Security”) and *The Changing Legal Orders in Hong Kong and Mainland China* (“Changing Legal Orders”) must be read. Both volumes had the misfortune of seeing print shortly before (in the case of *China’s National Security*) or during (in the case of *Changing Legal Orders*) that process. Both books, then, are akin to the remains of Pompeii: they provide a valuable glimpse of Hong Kong’s legal order and legal scholarship at a moment of cataclysmic change – one unlikely ever to be replicated.³⁶

Of the two books, *China’s National Security* has suffered more from its untimely birth. Much of its text was completed months before the NSL was imposed (*China’s National Security*, p. v). As a result, many

33 Selina Cheng, *Video: “Fake News” that Endangers National Security Will Be Probed Says Hong Kong Police Chief*, HONG KONG FREE PRESS, <https://hongkongfp.com/2021/04/16/video-fake-news-that-endangers-national-security-will-be-probed-says-hong-kong-police-chief/> (Apr. 16, 2021).

34 See, e.g., Mary Hui, *Beijing is Breaching Hong Kong’s Final Line of Defense: Its Judiciary*, QUARTZ, <https://qz.com/1944464/hong-kongs-judges-are-its-final-line-of-defense-from-beijing/> (Dec. 29, 2020) (Chief Executive Carrie Lam declaring that “taken as a totality it’s basically still the rule of law” in the territory).

35 In a dual state, the “prerogative state” (typically the security apparatus) is not subject to legal restraints, and has the power to decide whether the ordinary rules of the “normative state” apply to any particular case or individual: see generally ERNST FRAENKEL, *THE DUAL STATE: A CONTRIBUTION TO THE THEORY OF DICTATORSHIP* (E.A. Shills trans., Oxford University Press 2d ed. Jun. 2017). I warned, in March 2017, that Beijing loyalists sought to create a dual state in Hong Kong: “Beijing is Weakening Hong Kong’s Rule of Law. How Far Will It Go?”, CHINAFILE (May 9, 2017), <https://www.chinafile.com/reporting-opinion/viewpoint/beijing-weakening-hong-kongs-rule-of-law-how-far-will-it-go> (written version of remarks made at the Council on Foreign Relations on March 9, 2017).

36 On the increasingly beleaguered state of academic freedom in Hong Kong, see page 18 *infra*.

of the concerns raised in its chapters – in particular, the contributions in Part III considering how Hong Kong’s national security institutions should be created – have been overtaken by subsequent events.

Notwithstanding the imposition of the NSL, many of the concerns raised in Parts I and II of *China’s National Security* remain salient. The chapters of Part I lay bare the fundamental instability of OCTS and the inevitability of a conflict between political actors in Hong Kong and Beijing. Albert H.Y. Chen’s and Lin Feng’s contributions, although broadly optimistic about the prospects of OCTS, acknowledge the extent to which its viability depends on Beijing’s exercise of relative restraint, as well as the ways in which that restraint has fallen away even before the NSL was imposed.³⁷ Other chapters in Part I address the underlying reasons for Mainland-Hong Kong conflict. As Fu Hualing notes (*China’s National Security*, pp. 46–47), the PRC has defined “national security” in a way that encompasses *every* arena of political, social, and economic activity.³⁸ In contrast, as Wai-Man Lam shows in his analysis of survey data (*China’s National Security*, pp. 70–80), Hong Kongers continue to embrace a conception of the rule of law that encompasses fundamental rights, judicial independence, and legal autonomy.

Paulo Cardinal’s account of developments in Macau – increasingly viewed by Beijing as the poster child for OCTS – sets out one possible outcome of that conflict: weak institutions incapable of maintaining their distinctiveness from the Mainland (*China’s National Security*, p. 100). Macau, as Cardinal acknowledges, differs from Hong Kong in size, civil society strength, and governing culture (*China’s National Security*, p. 90). However, this risks understating the historical divergence between the two Special Administrative Regions: pro-Beijing political groups have been in effective control of Macau since 1966,³⁹ and Macanese local identity has remained relatively weak.⁴⁰ Macau may well end up being the end-point of Hong Kong’s recolonisation,⁴¹ but – at least for now – that objective has yet to be reached.

³⁷ I discuss this further in the context of Part I of *Changing Legal Orders* below.

³⁸ See also Jeremy Daum, *Sorting the Security Laws.*, CHINA LAW TRANSLATE (Sept. 15, 2020), <https://www.chinalawtranslate.com/sorting-the-security-laws/>.

³⁹ Thomas des Garets Geddes, *As Hong Kong Rebels, Why is Macau so Quiet?*, MERICS, <https://merics.org/en/analysis/hong-kong-rebels-why-macau-so-quiet> (Jan. 21, 2020).

⁴⁰ *Id.*

⁴¹ For a particularly frightening vision of that end-point, see Jevons Au et al., *Ten Years* (2015).

As Cardinal observes in the conclusion to his chapter, protection of the rule of law must ultimately rely on extra-textual sources: institutions, traditions, civil society, and international pressure. The contributors to Part II of *China's National Security* examine these sources of legal resilience in Hong Kong, and ultimately find them wanting.

That assessment has proved to be prescient. In her discussion of the role that administrative law might serve in protecting the rule of law, Swati Jhaveri notes that any discussion of the role of Hong Kong courts is subject to three major caveats: the uncertain scope of the Central Government's role, Hong Kong's duty to pass its own national security legislation under Article 23 of the Basic Law, and the potential definition of offences under any proposed legislation. Under the NSL, these caveats have grown: the NSL creates significant scope for Mainland intervention in the Hong Kong legal system; the offences under the NSL are framed extremely broadly; and the imposition of the NSL circumvented Basic Law Article 23 altogether. Jhaveri suggests that, even with the involvement of legislative opposition and civil society organisations, administrative law will amount to a "modest guardian" of the rule of law. The mass arrest and prosecution of pro-democracy politicians, and the continued assault on NGOs and the media, suggest that even this goal may be an ambitious one.

Jhaveri's discussion of administrative law review offers little scope for confidence. Jhaveri focuses on three possible avenues for the review of executive conduct: challenges to prosecutorial discretion, decisions under the Societies Ordinance (such as the decision that led to the banning of the pro-independence Hong Kong National Party),⁴² and procedural fairness of any investigatory or criminal process. Leaving aside whether Jhaveri is right to characterise these avenues as "administrative law," none of these potential challenges seem robust. The exercise of prosecutorial discretion in common-law jurisdictions has historically been difficult to challenge,⁴³ to the extent that it has been described as a "black

42 See generally Carole J. Petersen, *Prohibiting the Hong Kong National Party: Has Hong Kong Violated the International Covenant on Civil and Political Rights?*, 48 H.K.L.J. 789 (2018).

43 See, e.g., Stephanos Bibas, *The Need for Prosecutorial Discretion*, 19 TEMPLE POL. & CIV. RTS L. REV. 369 (2010); Nicholas Cowdery, *Challenges to Prosecutorial Discretion*, 39 COMMONWEALTH LAW BULLETIN 17 (Mar. 2013);

box.”⁴⁴ The power to ban political parties under the Societies Ordinance – colonial-era legislation originally intended for use against triad societies⁴⁵ – has yet to be judicially challenged, but recent cases suggest that the courts will take a dim view of any such challenge (*China’s National Security*, p. 128). Nor can defendants necessarily rely on procedural fairness: the NSL eliminates the presumption of bail⁴⁶ and undercuts the possibility of a jury trial⁴⁷ – or even a public trial of any sort.⁴⁸ More significantly, the absence of security of tenure for national security judges⁴⁹ and the threat of NPCSC “interpretations”⁵⁰ or wholesale removal of cases to the Mainland⁵¹ tightly limit the extent to which Hong Kong courts can engage in meaningful review.

P.Y. Lo’s chapter expands on the threats to the Hong Kong bench, and to the profession more broadly. Lo specifically points to two phenomena: a growing pattern of judicial deference to Beijing (*China’s National Security*, pp. 145–146) driven by the breadth of the NPCSC’s powers to “interpret” the Basic Law (*China’s National Security*, pp. 144–145), and increasing politicisation, including the use of openly racist rhetoric by pro-government actors (*China’s National Security*, pp. 139–143). As a result of these pressures, the government-dominated process for judicial appointments may become a political lightning rod.

Outside observers of the CFA have over-emphasised the role of Non-Permanent Judges from other jurisdictions, and whether they should continue to serve on the CFA:⁵² despite occasional fulminations by

Gary Chan, *Prosecutorial Discretion and the Legal Limits in Singapore*, 25 SINGAPORE ACADEMY OF L. J. 15 (2013).

44 Marc L. Miller & Ronald F. Wright, *The Black Box*, 94 IOWA L. REV. 125 (2008–2009).

45 See, e.g., Harold Traver, *Controlling Triads and Organized Crime in Hong Kong*, 14 H. K. J. (Apr. 2009).

46 *Bilingual Hong Kong National Security Law*, *supra* note 1, art. 42; *HKSAR v. Lai Chee Ying*, [2021] HKCFA 3 (Court of Final Appeal 2021).

47 *Bilingual Hong Kong National Security Law*, *supra* note 1, art. 46. There is no general right to a jury trial in Hong Kong in any event: see, e.g., *Tong Ying Kit v. Secretary for Justice* [2021] HKCFI 1397 (Court of First Instance 2021) (noting that even if there were a principle of trial by jury it has been abrogated by the NSL).

48 *Bilingual Hong Kong National Security Law*, *supra* note 1, art. 41.

49 *Id.* art. 44.

50 *Id.* art. 65.

51 *Id.* art. 55.

52 See, e.g., Stephen Dziedzic, *Australian James Spigelman Resigns as Judge of Hong Kong Appeals Court over New National Security Law*, ABC NEWS (Sept. 18, 2020), <https://www.abc.net.au/news/2020-09-18/judge-quits-over->

pro-Beijing politicians,⁵³ it is unlikely that they will disappear altogether.⁵⁴ The continued recruitment of Permanent Judges poses a far greater problem. The CFA is required to sit as a panel consisting of the Chief Justice, three Permanent Judges, and one Non-Permanent Judge (either a retired Hong Kong judge or a judge from another common law jurisdiction);⁵⁵ in the absence of a third Permanent Judge, the CFA has been forced to rely on a dwindling number (currently four) of Hong Kong-based Non-Permanent Judges.⁵⁶ As of May 2021, one Permanent Judge position has gone vacant for over three months – and long after a statutory nomination committee made its recommendation.⁵⁷ This continued vacancy, coupled with the likelihood of an increasingly politicised appointments process, bodes poorly for the CFA’s long-term prospects.

Lo then considers the state of the legal profession, with particular emphasis on the growing political and economic pressures on barristers in a split-profession jurisdiction. Faced with growing competition, greater reliance on Mainland income, and increasingly strident attacks from the Beijing and Hong Kong

hong-kong-national-security-law/12679318 (last visited May 10, 2021); *contra*, Sumption, *supra* note 10.

53 See, e.g., Cheung, *supra* note 26.

54 See generally Anna Dzedzic, *Foreign Judges and Hong Kong’s New National Security Law*, 25 COMMONWEALTH JUDICIAL J. 27 (October 2020) (on the significance of foreign judges in enhancing the prestige of Hong Kong’s legal system and whether they will be marginalised in “national security” cases).

55 Hong Kong Court of Final Appeal Ordinance Cap. 484 § 16.

56 *Id.*; *The Non-Permanent Judges*, HONG KONG COURT OF FINAL APPEAL, <https://www.hkcfa.hk/en/about/who/judges/npjs/index.html> (last visited May 14, 2021).

57 See, e.g., 林勵, 終院常任法官罕現「空窗期」逾月 過去多無縫交接 特首辦避答中央有否施壓, 眾新聞, <https://www.hkcnews.com/article/38706/終審法院-袁家寧-終審法院常任法官-38706/終院常任法官罕現「空窗期」逾月-過去多無縫交接-特首辦避答中央有否施壓> (Mar. 2, 2021) (Chinese-language news article from March 2021 noting that position has been vacant for over a month); *The Permanent Judges*, HONG KONG COURT OF FINAL APPEAL, <https://www.hkcfa.hk/en/about/who/judges/pjs/index.html> (last visited May 14, 2021) (listing only Ribeiro PJ and Fok PJ); *Introduction*, HONG KONG COURT OF FINAL APPEAL, <https://www.hkcfa.hk/en/about/who/judges/introduction/index.html> (last visited May 14, 2021) (“There are three Permanent Judges”). On May 12, 2021, the Chief Executive accepted the Judicial Officers Recommendation Commission’s recommendation of Johnson Lam VP: see Tony Cheung, *Hong Kong Leader Accepts Recommendation That Veteran Judge Johnson Lam be Named to City’s Top Court*, S. CHINA MORNING POST (May 12, 2021), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3133169/hong-kong-leader-accepts-recommendation-veteran-judge>.

governments,⁵⁸ Lo cautions that the long-term independence of the Hong Kong Bar – and of the profession at large – cannot be taken for granted.

The one omission in Lo’s otherwise comprehensive account is the degree to which the government has sought to cash in on the reputation of the judiciary. To be fair, Lo refers to the government’s defence of the rendition bill by accusing opponents of denigrating the judicial system (*China’s National Security*, pp. 142-144). Nonetheless, the government’s willingness to palm off abuses of prosecutorial discretion on the bench has been – and remains – a bigger problem. In the wake of the Umbrella Movement, the Department of Justice has pursued pro-democracy politicians and activists with particular vigour,⁵⁹ while allowing police officers who brutalised protesters to avoid accountability.⁶⁰ Meanwhile, it has responded to critics of such prosecutions by pointing to the independence of the judiciary⁶¹ – which does *not* get to make charging decisions.

Legislators and civil society fare little better as sources of legal resilience. As Margaret Ng observes in her chapter, the Hong Kong government has steadily undermined the legislature since the failure to pass earlier national security legislation in 2003. The desired goal appears to be a legislature unable to veto legislation of any sort – as a method of “legitimising tyranny in the name of the rule of law” (*China’s National Security*, p. 177). Since the conclusion of the pro-democracy Umbrella Movement in 2014, the Hong Kong government has defenestrated ten legislators or legislators-elect;⁶² on March 30, the NPCSC

58 See, e.g., *No Need to Intervene in Bar Association for Now*: CE, RTHK, <https://news.rthk.hk/rthk/en/component/k2/1587895-20210427.htm> (Apr. 27, 2021) (describing the Hong Kong Chief Executive’s implicit threats to the Bar).

59 See *Political Prisoners in Hong Kong*, CHINAFILE, <https://www.chinafile.com/conversation/political-prisoners-hong-kong> (Aug. 17, 2017) (reviewer’s brief account of the re-sentencing of protest leaders Joshua Wong, Alex Chow, and Nathan Law).

60 See *Concluding Observations on the Fifth Periodic Report of China with Respect to Hong Kong, China*, No. CAT/C/CHN-HKG/CO/5, ¶¶ 14–15 (Feb. 2016).

61 See, e.g., *Judicial independence upheld*: CE, HONG KONG INFORMATION SERVICES DEPARTMENT, http://www.news.gov.hk/eng/2019/04/20190410/20190410_175632_479.html (Apr. 10, 2019).

62 See Benjamin Haas & Eric Cheung, “*We Did Nothing Wrong*”: Banned Hong Kong Politician on Oath-Taking Protest, *GUARDIAN* (Nov. 15, 2016), <http://www.theguardian.com/world/2016/nov/15/we-didnt-do-anything-wrong-banned-hong-kong-politician-yau-wai-ching-oath-taking-protest> (two legislators-elect disqualified); Holmes Chan, “Long Hair” Leung Kwok-Hung to Take Case to Highest Court, *after Court of Appeal Affirms 2016 Lawmaker*

dictated a legislative restructuring that will effectively preclude the possibility of any political opposition within it.⁶³ Ng herself has been handed a suspended sentence for her participation in an unauthorised assembly, and may face a disciplinary inquiry by a beleaguered Bar.⁶⁴ Similarly, Michael C. Davis' assessment that civil society will be greatly diminished has been borne out by subsequent events. The Civil Human Rights Front – the organisers of annual 1 July protest marches calling for direct elections – is now being investigated under the Societies Ordinance. Pro-democracy protesters and activists have had their bank accounts frozen, apparently at the behest of national security police.⁶⁵ Nonetheless, as Subabhi Chopra cautions, it would be a mistake to view civil society as an exclusively progressive force; one possible outcome – one that remains under-explored in the book – is the domination of civil society by pro-government groups and other forms of “astroturfing.”⁶⁶

As noted earlier, much of Part III – devoted to exploring how a Hong Kong national security law regime might sensibly be created – is now purely of historical interest. That said, three of its chapters continue to be relevant. Carole J. Petersen's thoughtful discussion of internal self-determination and the role that public international law might play in protecting civil liberties in the territory merits careful reading. Her account of the United Nations' original sin of removing Hong Kong from its list of non-self-

Disqualification, HONG KONG FREE PRESS (Feb. 15, 2019), <https://hongkongfp.com/2019/02/15/breaking-hong-kong-appeal-court-affirms-disqualification-ex-lawmaker-long-hair-leung-kwok-hung-2016-oath-taking-saga/> (four legislators disqualified); Lily Kuo & Helen Davidson, *Hong Kong Opposition Lawmakers All Quit after Four Members Ousted*, GUARDIAN (Dec. 11, 2020), <http://www.theguardian.com/world/2020/nov/11/china-pro-democracy-hong-kong-lawmakers-opposition-oust> (four legislators disqualified).

63 See Changhao Wei & Taige Hu, *2021 NPC Session: NPC's Hong Kong Electoral Overhaul Decision Explained*, NPC OBSERVER, <https://npcobserver.com/2021/03/11/2021-npc-session-npcs-hong-kong-electoral-overhaul-decision-explained/> (Mar. 11, 2021).

64 Kelly Ho, *Hong Kong Legal Icons Martin Lee and Margaret Ng Face Bar Council Probe over Peaceful Demo Convictions*, HONG KONG FREE PRESS (Apr. 28, 2021), <https://hongkongfp.com/2021/04/28/hong-kong-legal-icons-martin-lee-and-margaret-ng-face-bar-council-probe-over-peaceful-demo-convictions/> (last visited May 10, 2021).

65 See, e.g., David Pierson, *A Hong Kong Pastor Tried to Protect Democracy Activists. Now His Bank Account is Frozen*, L.A. TIMES (Dec. 16, 2020), <https://www.latimes.com/world-nation/story/2020-12-16/hong-kong-bank-accounts-frozen>; Chris Chang, *Hong Kong Banks Freeze Accounts of Pro-Democracy Protesters*, TAIWAN NEWS, <https://www.taiwannews.com.tw/en/news/4137950> (Feb. 27, 2021).

66 See, e.g., Samson Yuen & Edmund W Cheng, *Neither Repression Nor Concession? A Regime's Attrition Against Mass Protests*, 65 POL. STUD. 611 (Oct. 2017) (on the role of ostensibly private plaintiffs with close ties to the Hong Kong and Beijing governments in ending the Umbrella Movement).

governing territories (*China's National Security*, pp. 235–239) – and her suggestion that that exclusion might warrant reconsideration⁶⁷ – are particularly intriguing. Nonetheless, as Danny Gittings cautions in his chapter “Unpalatable Realities and Hard Choices,” the prospects for meaningful action within the UN framework are minuscule – scarcely surprising, given the repeated (and ludicrous) insistence by the Beijing and Hong Kong governments that the Sino-British Joint Declaration is defunct.⁶⁸ In retrospect, a more apt title for Gittings’ chapter – and a fitting epitaph for OCTS – might well be “Unpalatable Realities, No Choices.”

Yash Ghai and Jill Cottrell Ghai conclude *China's National Security* by discussing the PRC’s growing geopolitical clout through the lens of the Belt and Road Initiative (“BRI”), and suggest that Chinese influence will forestall significant global solidarity with Hong Kongers. To the extent that Ghai and Cottrell Ghai anticipate minimal international support for Hong Kong, they have been largely vindicated: other than mealy-mouthed statements of “concern”,⁶⁹ there have been few to no repercussions for Beijing’s destruction of OCTS in the territory.

67 *Id.* at 247.

68 See, e.g., LCQ5: *The Joint Declaration on the Question of Hong Kong*, INFO.GOV.HK 5, <https://www.info.gov.hk/gia/general/201412/17/P201412170731.htm> (Dec. 17, 2014) (Hong Kong’s Secretary for Constitutional and Mainland Affairs); Grace Tsoi, *Does China Think the Sino-British Joint Declaration Is Void?*, FOREIGN POLICY (Dec. 18, 2014), <https://foreignpolicy.com/2014/12/18/does-china-think-the-sino-british-joint-declaration-is-void/>; Joyce Ng, *Joint Declaration of 1984 ‘No Longer Has Realistic Meaning’*, *China Says*, S. CHINA MORNING POST, <https://www.scmp.com/news/hong-kong/politics/article/2100779/sino-british-joint-declaration-hong-kong-no-longer-has-any> (Jun. 30, 2017).

69 See, e.g., *China’s Proposed New Security Law for Hong Kong: Joint Statement*, GOV.UK, <https://www.gov.uk/government/news/joint-statement-from-the-uk-australia-canada-and-united-states-on-hong-kong> (May 28, 2020); *Canada Takes Action Following Passage of National Security Legislation for Hong Kong*, GLOBAL AFFAIRS CANADA, <https://www.canada.ca/en/global-affairs/news/2020/07/canada-takes-action-following-passage-of-national-security-legislation-for-hong-kong.html> (July 3, 2020); *Hong Kong: Council Expresses Grave Concern over National Security Law*, COUNCIL OF THE EUROPEAN UNION, <https://www.consilium.europa.eu/en/press/press-releases/2020/07/28/hong-kong-council-expresses-grave-concern-over-national-security-law/> (July 28, 2020); *Joint Statement on Hong Kong*, AUSTRALIAN GOVERNMENT DEPARTMENT OF FOREIGN AFFAIRS AND TRADE, <https://www.dfat.gov.au/news/news/joint-statement-hong-kong-0> (Nov. 19, 2020); *Hong Kong Statement*, AUSTRALIAN GOVERNMENT DEPARTMENT OF FOREIGN AFFAIRS AND TRADE, <https://www.dfat.gov.au/news/news/hong-kong-statement> (Jan. 6, 2021).

The PRC's long-term geopolitical prospects, however, are less clear. Ghai and Cottrell Ghai are right to point out that the PRC has "won many friends" with the BRI (*China's National Security*, p. 332), but it is unclear whether Beijing will be able to keep them. China's increasingly belligerent "wolf-warrior diplomacy"⁷⁰ – driven primarily by domestic political tensions⁷¹ – shows few signs of abating, despite (or, rather, *because of*) its alienating effects. To cite a recent example, the PRC responded to EU sanctions against Chinese officials responsible for the oppression of Uyghurs in Xinjiang⁷² by imposing sanctions on European parliamentarians, think-tanks, and academics.⁷³ As a result, the EU has paused ratification of the EU-PRC Comprehensive Agreement on Investment ("CAI")⁷⁴ – a process unlikely to be resumed for the foreseeable future. Barring any major changes in strategy, Beijing's newfound global influence may prove more precarious than Ghai and Cottrell Ghai suggest.⁷⁵

Ultimately, the significance of *China's National Security* may lie less in its subject matter than in the fact that it was published at all. As of May 2021, two university councils in Hong Kong have already severed ties with their student unions for political reasons and put severe restrictions on campus expression;

70 See, e.g., Bethany Allen-Ebrahimian, *New Book Explores Origins of China's Wolf Warrior Diplomacy*, AXIOS (Apr. 20, 2021), <https://www.axios.com/new-book-explores-origins-of-chinas-wolf-warrior-diplomacy-f3c259cb-0ce3-4fe8-93e6-ef250c38bd6e.html> (last visited May 10, 2021); *Welcome to Wolf-Warrior Diplomacy*, BLOOMBERG.COM (Apr. 12, 2020), <https://www.bloomberg.com/news/newsletters/2020-12-04/welcome-to-wolf-warrior-diplomacy>.

71 See Allen-Ebrahimian, *supra* note 70; David Bandurski, *Xi Jinping: Leader of the Wolf Pack*, GLOBAL ASIA, https://www.globalasia.org/v15no3/focus/xi-jinping-leader-of-the-wolf-pack_david-bandurski (Sept. 2020).

72 See generally *The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention*, NEWLINES INSTITUTE, <https://newlinesinstitute.org/uyghurs/the-uyghur-genocide-an-examination-of-chinas-breaches-of-the-1948-genocide-convention/> (Mar. 8, 2021); *China: Crimes Against Humanity in Xinjiang*, HUMAN RIGHTS WATCH, <https://www.hrw.org/news/2021/04/19/china-crimes-against-humanity-xinjiang> (Apr. 19, 2021).

73 Andreea Brînză, *China's EU Sanctions Are the Latest Proof: Beijing Doesn't Understand Democracies*, THE DIPLOMAT, <https://thediplomat.com/2021/03/chinas-eu-sanctions-are-the-latest-proof-beijing-doesnt-understand-democracies/> (Mar. 25, 2021).

74 Sabine Siebold & Philip Blenkinsop, *EU Puts up Guard to Chinese Firms, Cools on Trade Deal*, REUTERS, <https://www.reuters.com/world/china/eu-executive-slows-push-china-investment-deal-2021-05-05/> (May 5, 2021).

75 See, e.g., Abhijnan Rej, *China's Ambitions Generating Global Pushback – Though Unevenly, Scholar Argues*, THE DIPLOMAT, <https://thediplomat.com/2021/02/chinas-ambitions-generating-global-pushback-though-unevenly-scholar-argues/> (Feb. 9, 2021); Julian Ryall, *Can US and Japan Push Back against China in Indo-Pacific?*, DEUTSCHE WELLE, <https://www.dw.com/en/us-japan-and-china-in-indo-pacific/a-56887763> (Mar. 16, 2021).

academic freedom in the territory is now – at best⁷⁶ – wounded, with a poor prognosis.⁷⁷ The very reasons why *China's National Security* is compelling reading also suggest that it is unlikely ever to be bettered.

Like *China's National Security*, *Changing Legal Orders* is a product of an era that has now passed. The book – a collection of Albert Chen's scholarship over the past 20-odd years – loosely follows a concentric structure: the relationship between Hong Kong and the Mainland (Part I), a history of Chinese law and legal thought (Part II), and constitutionalism in East Asia (Part III). The essays in *Changing Legal Orders*, although somewhat disparate in themes, share a common thread: Chen's faith that the PRC would move (albeit slowly and gradually) in the direction of something approximating to constitutionalism and the rule of law (*Changing Legal Orders*, p. 162).

Chen's essays in Part I of *Changing Legal Orders* cover developments in Hong Kong from 1997 to the protests against the rendition bill in June 2019. Chen, in his own words, has sought to adopt a "balanced" and "objective" approach to the study of OCTS; in practice, this approach has resulted in a largely descriptive, didactic tone throughout.

Chen consistently stresses the need for "mutual accommodation and respect" between Hong Kong and the PRC Party-State (*Changing Legal Orders*, p. 85). In doing so, he under-emphasises the power asymmetry between a population of 7-odd million under a partially-representative devolved government and the ruling party in a "people's democratic dictatorship" of 1.4 billion. Although one can discern cracks in the façade of OCTS – largely the result of conduct by Beijing – from these chapters, they are rarely, if ever, attributed solely to the devolving authority. Instead, Chen seems content to assume that Beijing has (for the most part) exercised, and will continue to exercise, the necessary self-restraint in its approach to Hong Kong (*Changing Legal Orders*, p. 30, p. 85). This assumption was questionable at best even before the

⁷⁶ See Carole J. Petersen, *Wounded But Not Dead*, U.S.-ASIA LAW INSTITUTE, <https://usali.org/usali-perspectives-blog/wounded-but-not-dead> (May 6, 2021); *contra* Danny Gittings, *China's National Security*, p. 303 ("Petersen might even need to think twice about visiting Hong Kong...").

⁷⁷ See page 18 *infra*.

NSL,⁷⁸ as Beijing arrogated to itself ever more powers to intervene in ostensibly devolved matters (*Changing Legal Orders*, pp. 80–83);⁷⁹ it has aged particularly poorly in light of subsequent events.

Part II of *Changing Legal Orders* showcases Chen’s wide-ranging interests within the realm of Chinese legal thought and political philosophy: how to reconcile Confucianism with human rights and the rule of law (Chapters 6 through 8 and parts of Chapter 12); the history of the PRC’s legal system and its relationship with the traditional taxonomy of socialist, civil, and common law systems (Chapters 9 and 10 respectively); and the development of property law in the PRC (Chapter 11). Although each of these chapters makes for interesting reading in their own right, they make for a less satisfying whole. Nonetheless, two particular aspects of Part II stand out for the light they shed on contemporary Chinese legal thought.

First, Chen extensively discusses the historical role of Confucianism in Chinese law and its continuing influence on Chinese legal culture (Chapters 6 through 8). Yet – apart from some tantalising references in Chapter 6 – there is no mention of Legalism, its major philosophical rival during the Warring States period and beyond. That omission is striking for two reasons. First, Chen’s brief account of the incorporation of Legalist norms and institutions into “Confucian” ideas of governance – a process of “Confucianisation of law” – suggests that more can be said about Legalism’s influence on pre-Republican China. Second, as Jerome A. Cohen and others have argued, Xi Jinping’s style of leadership owes more to the Legalism of Han Feizi and Shang Yang than it does to Confucianism.⁸⁰

⁷⁸ See, e.g., Chan, *supra* note 20.

⁷⁹ Describing the growing role of the Central Government’s Liaison Office in Hong Kong. See also Chan, *supra* note ; Alvin Y.H. Cheung, *Does Hong Kong Need a Mayor?*, I-CONNECT – BLOG OF THE JOURNAL OF INTERNATIONAL CONSTITUTIONAL LAW (Apr. 1, 2015), <http://www.iconnectblog.com/2015/04/does-hong-kong-need-a-mayor/> (documenting specific allegations of Liaison Office interference in Hong Kong politics).

⁸⁰ See, e.g., Jerome A. Cohen, *Foreword to the Fifth Edition*, in AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA (5th ed. 2018); *Why Xi Jinping’s China is Legalist, Not Confucian*, CHINA CHANNEL (Jun. 29, 2018), <https://chinachannel.org/2018/06/29/legalism/>; Jianying Zha, *China’s Heart of Darkness — Prince Han Fei & Chairman Xi Jinping (Part I)*, CHINA HERITAGE (Jul. 17, 2020), <http://chinaheritage.net/journal/chinas-heart-of-darkness-prince-han-fei-chairman-xi-jinping-part-i/>; Alexander Zwagerman, *The Chinese Hobbes – Xi Jinping’s Favourite Philosopher*, HONG KONG FREE PRESS (June 13, 2016), <https://hongkongfp.com/2016/06/13/chinese-hobbes-xi-jinpings-favorite-philosopher/> (last visited May 13, 2021).

Second, Chen's exploration of Peking University professor Zhu Suli's scholarship in Chapter 12 shows the extent to which liberal Chinese legal scholarship has receded. When that chapter was first published in 2004, Zhu's scepticism towards "Western" human rights discourse and legal modernisation was distinctly unorthodox within Chinese legal academia (*Changing Legal Orders*, p. 327); nearly two decades later, such views have firmly entered the mainstream. Zhu's rejection of universal rights, and his vision of legal scholarship as a fundamentally justificatory enterprise, are echoed in more recent work by (among others) Schmittians⁸¹ Jiang Shigong, Chen Duanhong, and Tian Feilong;⁸² meanwhile, more liberal scholars such as Xu Zhangrun have been punished for their writing.⁸³ As Chinese campuses become increasingly hostile to liberal thought, more are likely to follow in Zhu's footsteps.⁸⁴

Chen's gaze turns tentatively outwards in Part III. Chapters 13 and 14 give a brief account of historical developments in a plethora of jurisdictions in East and Southeast Asia; they may serve as useful starting points for future research, but are unlikely to hold the interest of a reader already familiar with the region. One is left, however, with a sense of Chen's enduring faith in constitutional progress.

Chen's optimism is sorely tested by the events in Hong Kong and the PRC he documents in the Epilogue. His narrative account of the anti-rendition bill protests in 2019, and the imposition of the NSL in 2020, conspicuously avoids any normative conclusions or discussion of the inherent power imbalance in

81 See, e.g., Lucas Brang, *Carl Schmitt and the Evolution of Chinese Constitutional Theory: Conceptual Transfer and the Unexpected Paths of Legal Globalisation*, 9 GLOBAL CONSTITUTIONALISM 117 (Cambridge University Press Mar. 2020).

82 See generally Ryan Mitchell, *Chinese Receptions of Carl Schmitt Since 1929*, 8 PENN STATE J. OF L. & INT'L AFFAIRS 1 (2020).

83 *Outspoken Critic of Chinese Leadership Sacked by University*, S. CHINA MORNING POST, <https://www.scmp.com/news/china/politics/article/3093769/chinese-professor-known-challenging-party-leadership-sacked> (July 18, 2020); *What Does the Punishment of a Prominent Scholar Mean for Intellectual Freedom in China?*, CHINAFILE, <https://www.chinafile.com/conversation/what-does-punishment-of-prominent-scholar-mean-intellectual-freedom-china> (Mar. 28, 2019).

84 See, e.g., Boti Li, *The Campus Fire Goes Out*, ECHOWALL, <https://www.echo-wall.eu/chinese-whispers/campus-fire-goes-out> (Apr. 26, 2021) (written by pseudonymous Chinese professor).

OCTS. That omission – perhaps understandable when the chapters in Part I were written – is less excusable in 2021.

The sanguinity only begins to wear off in Chen’s discussion of whether the rule of law will – or can – develop in the PRC. Even allowing for the contestable nature of the rule of law,⁸⁵ a relatively modest account of its functions must involve *some* limit to the arbitrary exercise of power.⁸⁶ Yet the creature that emerges from Chen’s description of the state of Chinese legality – one in which the Party jealously guards its prerogative to intervene in “sensitive” cases – is not a *Rechtsstaat*, not even one with Chinese or Socialist characteristics; it is a dual state.⁸⁷ As Chen’s discussion of “socialist constitutionalism” recognises, and as the demise of OCTS in Hong Kong suggests, it is vanishingly unlikely that the PRC’s current leadership will willingly subject itself to any effective constraints.

Ultimately, the story that *Changing Legal Orders* tells is a tragic one. Chen – a pioneer in the study of PRC law – has consistently sought to mediate between liberal democratic aspirations on the one hand, and the Party-State on the other. His scrupulous efforts to give an even-handed account of OCTS throughout Part I are testament to that aim. So, too, was his suggestion in 2013 – one which he is too modest to mention in *Changing Legal Orders* – that the Hong Kong public be permitted to make non-binding recommendations for the nomination of Chief Executive candidates.⁸⁸ However, neither Hong Kong’s pro-democracy movement, nor the PRC under Xi Jinping, have been receptive.⁸⁹

85 See Jeremy Waldron, *Is the Rule of Law an Essentially Contested Concept (In Florida)?*, 21 LAW & PHIL. 137 (2002).

86 See, e.g., Martin Krygier, *The Rule of Law: Legality, Teleology, Sociology*, in RELOCATING THE RULE OF LAW 45 (Gianluigi Palombella & Neil Walker eds., 2009); Martin Krygier, *Four Puzzles About the Rule of Law: Why, What, Where? And Who Cares?*, 50 NOMOS 64 (2011).

87 See FRAENKEL, *supra* note 35.

88 Stuart Lau, *Central Government Adviser on Hong Kong Rejects Civil Nomination for 2017*, S. CHINA MORNING POST (Sep. 23, 2013), <https://www.scmp.com/news/hong-kong/article/1315514/central-government-adviser-hong-kong-rejects-civil-nomination-2017>.

89 See, e.g., Cheung, *supra* note 18, at 501–3 (documenting numerous proposals for Chief Executive selection, including Chen’s, all of which Beijing rejected).

A cynic might dismiss the relevance of the former – its most prominent members, after all, have been incarcerated or exiled. The latter, however, is not so easily waved away. When Carole Petersen and I co-authored an article on declining academic freedom in Hong Kong in 2016, numerous interviewed academics declined to be identified by name, citing the possibility of political retribution;⁹⁰ under the NSL, they now face the prospect of lengthy prison sentences. The very environment that makes *China's National Security* and *Changing Legal Orders* such essential reading may also have ensured that these books are the last of their kind.

90 Carole J. Petersen & Alvin Y. H. Cheung, *Academic Freedom and Critical Speech in Hong Kong: China's Response to Occupy Central and the Future of "One Country, Two Systems,"* 42 N.C. J. INT'L L. 1, 51–52 (2016).