WHAT WILL HAPPEN TO HONG KONG AFTER 2047?

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I. INTRODUCTION

China guaranteed that Hong Kong would be allowed to follow a different system from the rest of the country for fifty years from June 30, 1997, under the policy of "one country, two systems." June 30, 2047, marks the expiration date of this guarantee. As June 30, 2047, approaches, more questions concerning what will happen to Hong Kong are expected to emerge.[1]

Both the Joint Declaration on the Question of Hong Kong (the 1984 bilateral treaty in which Britain and China agreed to the terms of the 1997 handover), and the Basic Law of the Hong Kong Special

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1. Under Article 1 of the 1982 Constitution of the People's Republic of China, "[t]he socialist system is the basic system of the People's Republic of China." XIANFA art. 1 (1982) (China) [hereinafter CHINA CONSTITUTION]. Hong Kong's two foundational documents, the Joint Declaration on the Question of Hong Kong and Hong Kong's constitution and the Basic Law of the Hong Kong Special Administrative Region, provide that Hong Kong's capitalist system "shall remain unchanged for 50 years" from July 1, 1997. 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 (with Annexes), U.K.-China, Annex I, § 1, Dec. 19, 1984, 1399 U.N.T.S. 33 [hereinafter Joint Declaration]; XIANGGANG JIBEN FA art. 5 (H.K.) [hereinafter HONG KONG BASIC LAW].

Administrative Region (the constitutional document which China's legislature, the National People's Congress, subsequently enacted to enshrine the promises in domestic legislation) reflect this "one country, two systems" guarantee in almost identical terms.[2] Both documents also outline the basic policies of the guarantee in considerable detail, with the later document (Hong Kong Basic Law) explicitly stating its purpose—to "ensure the implementation of the basic policies" in Hong Kong.[3] The Basic Law of the Hong Kong Special Administrative Region stipulates that,"[t]he socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years."[4] This implements and reinforces a provision in the Joint Declaration, which stipulates that "the basic policies of the People's Republic of China regarding Hong Kong . . . will remain unchanged for 50 years."[5]

Taken together, these documents provide a detailed description of the "one country, two systems" policy currently practised in Hong Kong. Under this policy, Hong Kong exists as a distinct entity from the rest of China, known as a Special Administrative Region (SAR),[6] and has a high degree of autonomy;[7] its own executive, legislative, and independent judicial power;[8] extensive guarantees of human rights;[9] and separate economic and financial systems.[10] The Hong Kong Basic Law purports to entrench these basic policies by prohibiting any amendments to this constitutional document that

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2. *See* Joint Declaration, *supra* note 1; HONG KONG BASIC LAW, *supra* note 1.

3. HONG KONG BASIC LAW, *supra* note 1, pmbl., para. 3.

4. HONG KONG BASIC LAW, *supra* note 1, art. 5.

5. Joint Declaration, *supra* note 1, para. 3(12).

6. *Id.* at para. 3(1); HONG KONG BASIC LAW, *supra* note 1, art. 5.

7. Joint Declaration, *supra* note 1, para. 3(2); HONG KONG BASIC LAW, *supra* note 1, art. 2.

8. Joint Declaration, *supra* note 1, para. 3(3); HONG KONG BASIC LAW, *supra* note 1, art. 2.

9. Joint Declaration, *supra* note 1, para. 3(5); HONG KONG BASIC LAW, *supra* note 1, arts. 24-41.

10. Joint Declaration, *supra* note 1, para. 3(6)-(8); HONG KONG BASIC LAW, *supra* note 1, arts. 106, 108-13.

would contravene the basic policies.[11] Neither document, however, addresses the issue of what will happen after the fifty-year period expires, an issue that is starting to attract some concern in Hong Kong, particularly in relation to the validity of property rights beyond that date.[12]

For some, the answer is simple. According to Kenneth Chan, "'one country, two systems' should be seen as a transitory arrangement with an expiry date—June 30, 2047."[13] According to this view, the special treatment Hong Kong enjoys for those fifty years is a temporary measure to ease the territory's reintegration back into China. Once that process is complete, it will be unnecessary to treat the city differently from any other part of the country. That argument is put forward most emphatically by Robert Morris, who argues that the Hong Kong Basic Law, "by its own terms[,] is to have a lifespan of 50 years from 1997 to 2047."[14]

Others adopt a more nuanced view. Johannes Chan notes the ambiguity over what will happen to Hong Kong in the long-term: "[i]t is unclear whether the ultimate goal is to retain two equally thriving but different systems, or whether it is to assimilate Hong Kong into

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11. HONG KONG BASIC LAW, *supra* note 1, art. 159(4), pmbl., para. 3 (stating that the Basic Law itself represents and "ensure[s] the implementation of the basic policies of the People's Republic of China regarding Hong Kong").

12. *See* Margaret Ng, *The Land We Stand On*, S. CHINA MORNING POST, June 1, 2007 ("Two recent incidents have raised concern. The first is land grants. Since July 1997, the SAR Government has been making land grants of 50 years from the date of the grant. As time goes on, more and more land grants extend beyond 2047. But does the SAR Government have the power to make grants beyond 2047? In legal language, what is the nature of the right granted for the period between 2047 and the expiry date of the grant?"). Margaret Ng is a barrister and the Hong Kong legal profession's representative in the local legislature.

13. Kenneth Ka-Lok Chan, *Taking Stock of "One Country, Two Systems," in* Yiu-chung Wong, "ONE COUNTRY, TWO SYSTEMS" IN CRISIS 35, 54 (Yiu-chung Wong, ed., 2004). Kenneth Chan is an Associate Professor of Political Science at Hong Kong Baptist University.

14. *See, e.g.*, Robert J. Morris, *The "Replacement" Chief Executive's Two-Year Term: A Pure and Unambiguous Common Law Analysis*, 35 H.K. L.J. 17, 22, 24 (2005) (referring to "the 2047 end-date of the Basic Law itself"). Robert Morris has a doctorate degree in Comparative and Chinese Law. Dr. Morris, who also has a Juris Doctorate degree, has taught at the University of Hong Kong.

the mainland politically, legally, culturally and ideologically."[15] Chan's view also raises the question of whether the two systems will even remain different in the long term, as the differences between the capitalist system practised in Hong Kong and the socialist system as now practised in China have already narrowed greatly in the quarter century since China and Britain agreed on the "one country, two systems" formula for Hong Kong in 1984.[16] If this trend continues, there may be even fewer differences between the two systems by the time June 30, 2047, arrives.

As part of the "one country, two systems" formula, Hong Kong has special privileges, including, but not limited to, its own Court of Final Appeal with the power of final adjudication,[17] and the authority to issue its own separate currency.[18] In the most optimistic scenario,

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15. Johannes Chan, *Civil Liberties, Rule of Law and Human Rights: The Hong Kong Special Administrative Region in its First Four Years*, *in* THE FIRST TUNG CHEE-HWA ADMINISTRATION: THE FIRST FIVE YEARS OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION 89, 116 (Lau Siu-kai ed., 2002). Johannes Chan is Dean of the Faculty of Law of the University of Hong Kong, and he is an expert on Hong Kong Constitutional Law.

16. For an example of how the differences between the two systems have narrowed, see the changes made to the Constitution of the People's Republic of China since 1984. When the parties agreed to the terms of Hong Kong's future in 1984, the 1982 version of the Constitution of the People's Republic of China prohibited any form of private land use rights. Since then, Articles 10 and 13 of China's constitution have been amended to both permit private land leases and strengthen private property rights. *Compare* CHINA CONSTITUTION arts. 10, 13 (1982) *with* CHINA CONSTITUTION arts. 10 (amended 1988), 13 (amended 2004).

17. Joint Declaration, *supra* note 1, para. 3(3), Annex I, § 3; HONG KONG BASIC LAW, *supra* note 1, arts. 19, 82.

18. Joint Declaration, *supra* note 1, para. 3(7); HONG KONG BASIC LAW, *supra* note 1, art. 111. These are the types of special privileges that national governments —whether socialist or capitalist—rarely grant to any region in any part of its country, save under some kind of formula as exceptional as "one country, two systems." For example, the International Committee of Lawyers for Tibet's study on Forms for Autonomy, which examined 34 autonomous arrangements around the globe, identified only three other examples of autonomous areas with their own independent judiciary. *See* EVA HERZER, TIBET JUSTICE CTR., OPTIONS for TIBET'S FUTURE POLITICAL STATUS: SELF-GOVERNANCE THOUGH [SIC] AN AUTONOMOUS ARRANGEMENT 12 (1999), http://www.tibetjustice.org/reports/AutonomyBooklet.pdf.

even if China has become a liberal democracy by June 30, 2047, practising the rule of law and respect for human rights, the issue of the future of Hong Kong's special privileges would remain. For the pessimists such as Kenneth Chan, these special privileges will automatically end together with all aspects of "one country, two systems" after the fifty-year period expires on June 30, 2047.[19] Other scholars take a more optimistic view. Benny Tai, for example, suggests "it is legally possible for the constitutional game of Hong Kong to continue to operate under the Basic Law after 2047."[20]

This article asserts that Tai's statement correctly reflects the legal position, and that change immediately after June 30, 2047, is far from inevitable. In reaching this conclusion, this article first argues that concerns about the validity of property rights (specifically, government land leases) beyond June 30, 2047, are overstated. Second, this article shows that, while further clarification may be considered desirable, perhaps even vital, as June 30, 2047, approaches, the existing provisions in the Hong Kong Basic Law already permit the continuation of "one country, two systems" beyond that date. Third, this article demonstrates that, while "one country, two systems" has the potential to continue beyond June 30, 2047, what will become possible after that date, if China so wishes, are fundamental changes to how "one country, two systems" is applied in Hong Kong. But, because the protections against China eroding "one country, two systems" even before that date are far less watertight than they appear at first sight, this article concludes that, even in this respect, the significance of June 30, 2047, is overstated.

II. VALIDITY OF PROPERTY RIGHTS BEYOND 2047

Because almost all private land in Hong Kong is held on long-term leases granted by the government, the government's authority to

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19. *See* Chan, *supra* note 13.

20. Benny Y.T. Tai, *Basic Law, Basic Politics: The Constitutional Game of Hong Kong*, 37 H.K. L.J. 503, 577 (2007). Benny Tai is an Associate Professor of Law at the University of Hong Kong, and he is a prominent commentator on current events in Hong Kong.

pass on good title to land is critically important.[21] This issue caused particular problems for Britain during the final decades of its rule in Hong Kong, because Britain itself held most parts of Hong Kong on a ninety-nine-year lease from China that expired on June 30, 1997.[22] Although other solutions were canvassed, Britain ultimately concluded that it lacked authority to grant any kind of land rights beyond that date without some form of approval from China.[23]

Initial attempts to secure China's informal approval for Britain to issue land leases extending beyond June 30, 1997, produced a hostile response from China during a 1979 meeting between Hong Kong Governor Lord Maclehose and Deng Xiaoping, China's paramount leader.[24] The uncertainty over the land lease issue then provided much of the impetus for the formal negotiations between the two countries about Hong Kong's future, and it ultimately culminated in the signing of the Joint Declaration in 1984. The Joint Declaration,

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21. For an excellent description of the system of government land leases in Hong Kong since 1841, see *Hong Kong Land Lease Reform, Part 1*, WEBB-SITE.COM (Oct. 7, 2010), http://www.webb-site.com/articles/leases1.asp. Throughout Hong Kong's history, leases have varied in length from fifty years to 999 years, largely depending on when they were granted. The government granted the longest leases during the 19th century, and it has granted shorter leases during more recent decades.

22. Under the "Convention of Peking 1898," the governments of Great Britain and China agreed to enlarge the limits of the British territory through a lease agreement. The term of the lease was 99 years from July 1, 1898, the year the Convention came into force. Convention Between Great Britain and China Respecting an Extension of Hong Kong Territory, June 9, 1898, Gr. Brit.-China, 90 B.S.P. 17 [hereinafter Convention of Peking 1898]. This enlargement, referred to as the New Territories, comprises over 90% of the land area of Hong Kong. ROBIN MCLAREN, BRITAIN'S RECORD IN HONG KONG 2, 12 (1997).

23. *See* ROBERT COTTRELL, THE END OF HONG KONG: THE SECRET DIPLOMACY OF IMPERIAL RETREAT 44-47 (1993). For a brief discussion on alternative options Britain could have pursued, see PETER WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW IN HONG KONG 59-61 (2d ed. 1994) (arguing that Britain, pursuant to either the Foreign Jurisdiction Acts of 1890 and 1913 or the act of state doctrine, could have asserted legal authority beyond June 30, 1997).

24. For an excellent account of the parties' failure to resolve the issue at this meeting, see COTTRELL, *supra* note 23, at 53-57, 61-62.

which includes an annex entirely devoted to resolving the land leaseissue,[25] gave Britain the legal authority to issue and renew land leases that extend beyond June 30, 1997—provided that their expiration date was no later than June 30, 2047.[26]

Based on the historical importance of land lease issues, it is no surprise that, thus far, much of the discussion about what will happen to Hong Kong after June 30, 2047, has once again focussed on the land lease issue.[27] The land lease issue is especially troubling because, ever since Britain's departure on June 30, 1997, the Hong Kong SAR Government, which has administered the territory since July 1, 1997, has not considered it necessary to apply a June 30, 2047 expiration date to the issuance and renewal of land leases.[28] Instead, most land leases are now issued or renewed for a period of fifty years, which means a large number of leases extend beyond June 30, 2047.[29] For example, the lease for the land used to construct the Hong Kong Disneyland theme park includes a right to renew the lease for a second

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25. Joint Declaration, *supra* note 1, Annex III.

26. *See id.* at Annex III, paras. 2-3. Under paragraph four, the grant of new land leases was subject to a fifty hectare annual limit. This limit, however, could be increased if the Land Commission consented. *Id.* at Annex III, paras. 4, 7(c).

27. Alice Lee, *Leases Beyond 2047?*, 1998 L. LECTURES FOR PRAC., 177 (H.K.) 183-86. Alice Lee is an Associate Professor of Law at the University of Hong Kong who specializes in Hong Kong Land Law. *See also* Margaret Ng, *supra* note 12.

28. THE GOV. OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, HOUSING, PLANNING AND LANDS BUREAU, CB(1)503/06-07(01), PERMANENT SECRETARY FOR HOUSING, PLANNING AND LANDS' REPLY TO THE HON. ALAN LEONG'S QUESTION ABOUT GOVERNMENT'S PROPOSAL OF GRANTING A 50-YEAR LEASE FOR THE OPERATION OF THE CRUISE TERMINAL (Dec. 12, 2006) [hereinafter GRANTING A 50-YEAR LEASE], *available at* http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw1114cb1-503-1-e.pdf. *See also* HONG KONG SPECIAL ADMINISTRATIVE REGION GOVERNMENT INFORMATION SERVICES DAILY INFORMATION BULLETIN, HKSARG LAND POLICY AND FIRST LAND DISPOSAL PROGRAMME ANNOUNCED (July 15, 1997), *available at* http://www.info.gov.hk/gia/general/dib/0715.htm.

29. For the Hong Kong SAR Government's justification of this practise, see GRANTING A 50-YEAR LEASE, *supra* note 28.

fifty-year period, a right which, if exercised, would allow this lease to continue until 2100.[30]

Some have expressed doubts and concerns about the legality of this practise and its broader implications for landowners. For example, citing the fifty-year limit in the Joint Declaration and the Hong Kong Basic Law on the guarantees against fundamental changes, Margaret Ng has questioned: "[h]ow is it possible for the SAR Government to grant a lease beyond 2047? What are the rights and interests of the 'owner' of the lease?"[31] Alice Lee also warns, "it does not take long for developers and property owners to realise that the validity of government leases is not absolutely certain."[32]

Given the historical background outlined above, such concerns are perhaps understandable. But, they overlook some very important differences between the land lease problems that arose during the final decades of British rule and the situation that exists in Hong Kong today. Prior to July 1, 1997, land leases were issued under the authority of British rule, which was itself subject to a June 30, 1997 time limit on the lease it had over most parts of Hong Kong.[33] Now, however, there is no equivalent time limit because Hong Kong has reverted to Chinese sovereignty, and all land and natural resources in the territory belong to the Chinese state in perpetuity.[34]

The power to manage, use, and develop that land—including granting land leases—is currently delegated to the Hong Kong SAR Government by the Chinese state.[35] But, even in the most extreme scenario of Hong Kong being abolished as a separate entity after June 30, 2047, and the simultaneous disappearance of the Hong Kong SAR Government that granted those leases, the rights granted under those

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30. *See* Press Release, Hong Kong Special Administrative Region Government, Land Lease Term for Disneyland Project (Nov. 4, 1999), *available at* http://www.info.gov.hk/gia/general/199911/04/1104149.htm.

31. Ng, *supra* note 12.

32. Lee, *supra* note 27, at 184.

33. MCLAREN, supra note 22, at 12; Convention of Peking 1898, *supra* note 22.

34. *See* HONG KONG BASIC LAW, *supra* note 1, art. 7.

35. *Id.*

land leases need not necessarily disappear. According to Albert Chen, the Chair Professor in Constitutional Law at the University of Hong Kong and a member of the Committee for the Basic Law,[36] responsibility for any unexpired portion of those land leases would simply pass to the body that authorized the Hong Kong SAR Government to issue the leases, namely the Chinese central government.[37]

Though some might justifiably object to transferring responsibility for land leases granted by Hong Kong authorities to the more uncertain hands of Chinese national authorities,[38] this potential outcome is no longer unthinkable in the way it was the last time fears arose over the future of land leases (during British rule in the early 1980s), a time when the Chinese constitution still prohibited any form of land leases.[39] Now, by contrast, private property rights are explicitly protected under the Chinese constitution,[40] and there is a

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36. Established by a Decision of the National People's Congress in 1990, the Committee for the Basic Law is comprised of Chinese and Hong Kong experts. Decision of the National People's Congress Approving the Proposal by the Drafting Committee for the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress Basic Law (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 4, 1990, effective Apr. 4, 1990) P.R.C. Laws (China). China consults with the Committee on issues relating to implementation of the Hong Kong Basic Law. *See* HONG KONG BASIC LAW, *supra* note 1, arts. 17(3), 18(3), 158(4), 159(3).

37. *Backchat: Interview by Danny Gittings and Hugh Chiverton with Albert Chen, Martin Lee, and Joseph Cheng* (Radio Television Hong Kong Channel 3 broadcast Dec. 8, 2009) [hereinafter *Backchat*] at 14:00-14:30 (transcript and audio on file with *California Western International Law Journal*), a radio panel discussion on the legal implications of 2047.

38. For an excellent description of the legal uncertainties which surround the granting of land leases in China (where they are known as land use rights), see PITMAN B. POTTER, THE CHINESE LEGAL SYSTEM: GLOBALIZATION AND LOCAL LEGAL CULTURE 69 (2001).

39. *See* CHINA CONSTITUTION, *supra* note 1, art. 10 (1982). Article 10 was eventually amended in 1988 to remove the constitutional prohibition. Article 10 now states, "[t]he right to the use of land may be transferred according to law." CHINA CONSTITUTION, *supra* note 1, art. 10 (amended 1988).

40. CHINA CONSTITUTION, *supra* note 1, art. 13 (amended 2004).

long-established legal framework for granting land leases in other parts of China.[41]

In addition to the overstated concerns about the validity of property rights beyond June 30, 2047, it cannot be argued that the Hong Kong SAR Government has exceeded its legal authority in issuing land leases that extend beyond June 30, 2047. Article 123 of the Hong Kong Basic Law, which grants the Hong Kong SAR Government broad authority to renew land leases "in accordance with laws and policies formulated by the Region on its own," makes no mention of a June 30, 2047 time limit.[42] This omission is particularly significant because an otherwise similar provision in Article 121 of the Hong Kong Basic Law, which covers the renewal of land leases in Hong Kong by British authorities *before* July 1, 1997, does set a June 30, 2047 time limit on any land leases renewed while Hong Kong was still under British rule.[43]

In defending its practise of issuing and renewing land leases beyond June 30, 2047, the Hong Kong SAR Government has argued, "[i]t also seems illogical to assume that the SAR government could only grant leases for an excessively short period as we approach 30 June 2047."[44] Wang Shuwen, a prominent Chinese legal scholar who played an important role in the drafting of the Hong Kong Basic Law, has put it more bluntly. Pointing to the differences in wording between Articles 121 and 123 of the Hong Kong Basic Law, Wang has dismissed as "groundless and unreasonable" any concern that the

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41. For an excellent account of the development of this legal framework, see JIANFU CHEN, CHINESE LAW: CONTEXT AND TRANSFORMATION 372-89 (2008) (discussing the history and evolution of the system of property rights in the context of Chinese law and exploring the evolution of property rights laws from the General Principles of Civil Law in the 1980s to the drafting of the 2007 Law on Rights *in rem*, which is also known as the 2007 Property/Property Rights Law).

42. HONG KONG BASIC LAW, *supra* note 1, art. 123. *See also* CK Lau, *Why 2047 Matters Even Now*, S. CHINA MORNING POST, July 18, 1997.

43. WANG SHUWEN ET AL., INTRODUCTION TO THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION 614-15 (Wang Shuwen, et al., eds., Jiang Guihua et al., trans., China Law Press English ed. 2000); *compare* HONG KONG BASIC LAW, *supra* note 1, art. 121 *with* HONG KONG BASIC LAW, *supra* note 1, art. 123.

44. GRANTING A 50-YEAR LEASE, *supra* note 28, para. 2.

Hong Kong SAR Government lacks the legal authority to issue land leases extending beyond June 30, 2047.[45]

III. "UNCHANGED FOR 50 YEARS"

Apart from the specific provisions regarding the renewal of land leases while Hong Kong was still under British rule, the international agreements and constitutional documents regarding Hong Kong's future do not explicitly mention the June 30, 2047 date. Because the parties' primary focus at that time was to provide reassurance about continuity beyond 1997, the date's omission is not necessarily surprising. Moreover, with considerable doubts about whether Hong Kong would even survive as a separate entity beyond June 30, 1997,[46] most people seemed to pay little attention to what would happen half a century beyond that.[47]

In the absence of any further direct references to June 30, 2047, in either the Joint Declaration or the Hong Kong Basic Law, the significance of this date must instead be inferred from the provisions in both documents that prohibit fundamental change for a period of fifty years beyond June 30, 1997. As already noted, Article 5 of the Hong Kong Basic Law states: "[t]he socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years." It is this provision, which repeats identical wording used in the Joint Declaration,[48] that is cited by those who believe that "one country, two systems" will automatically come to an end on June 30, 2047, and that the socialist system (if it still exists in the rest of China at that date) will be applied to Hong Kong after that date. Morris, for instance, argues: "[t]he destination is indeed 'to assimilate Hong Kong into the mainland politically, legally, culturally and

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45. SHUWEN, *supra* note 43, at 614-15.

46. *See, e.g.*, David J. Clark, *The Basic Law: One Document, Two Systems*, *in* THE HONG KONG BASIC LAW: BLUEPRINT FOR "STABILITY AND PROSPERITY" UNDER CHINESE SOVEREIGNTY? 38-39 (Ming K. Chan & David J. Clark eds., 1991).

47. For one of the earliest discussions of this issue, see CK Lau, *supra* note 42.

48. Joint Declaration, *supra* note 1, Annex I, § 1.

ideologically,' using force if necessary, at whatever place may exist there in 2047."[49]

However, it is open to question whether this is the correct interpretation of Article 5. Note, in particular, the comma separating Article 5 into two separate clauses in the English text of the Hong Kong Basic Law. The second clause, guaranteeing that the "previous capitalist system and way of life shall remain unchanged," is expressly limited to a specific time period of fifty years. But the first clause, guaranteeing that "the socialist system and policies shall not be practised in the Hong Kong Special Administrative Region" is not expressly stated in this way, and it does not appear to be subject to a specific time limitation.

This structural arrangement is significant because the guarantees in these two clauses separated by a comma in Article 5, although closely related, are not necessarily identical. While the guarantee in the second clause (that the socialist system and policies will not be practised in Hong Kong) is an essential precondition for the implementation of the guarantee in the first clause (that Hong Kong's previous capitalist system and way of life will be maintained), the same is not true in reverse. After all, it would be perfectly possible to make many changes to Hong Kong's previous capitalist system and way of life that stopped short of introducing a socialist system, and still maintained "one country, two systems" in some shape or form.

The Chinese text of the Hong Kong Basic Law, which prevails in the event of any discrepancy between the two texts,[50] is more ambiguous on this point.[51] In the Chinese text of Article 5, a reference to "no change for 50 years" is further separated from the

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49. Robert J. Morris, *Forcing the Dance: Interpreting the Hong Kong Basic Law Dialectically*, *in* INTERPRETING HONG KONG'S BASIC LAW: THE STRUGGLE FOR COHERENCE 97, 100 (Hualing Fu et al. eds., 2007).

50. Decision of the Standing Committee of the National People's Congress on the English Text of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., June 28, 1990), *translated in* P.R.C. Laws 1990-1992.

51. The Chinese text of Article 5 states as follows: 香港特別行政區不實行社會主義制度和政策，保持原有的資本主義制度和生活方式，五十年不變. HONG KONG BASIC LAW, *supra* note 1, art. 5.

statement that "the previous capitalist system and way of life shall remain unchanged" by a comma, making it unclear precisely what the reference to fifty years means.

In the absence of a clear conflict between the two texts, it is submitted that the position stated in the English text prevails, under which the guarantee that "the socialist system will not be practised in Hong Kong" is not expressly qualified by the fifty-year time period mentioned in the second clause of Article 5. Both the English and Chinese texts of the Preamble of the Hong Kong Basic Law reinforce this interpretation, as both declare, without reference to any specific time period, "that under the principle of 'one country, two systems', the socialist system and policies will not be practised in Hong Kong."[52]

In addition to the language and structure of the Hong Kong Basic Law permitting the continuation of "one country, two systems," Chinese leaders have never suggested that they intend to impose a socialist system on Hong Kong after June 30, 2047. In fact, Deng Xiaoping, China's leader during the signing of the Joint Declaration and drafting of the Hong Kong Basic Law, has repeatedly suggested that "one country, two systems" would remain in force beyond that date.[53] In 1988, for instance, Deng Xiaoping told an international conference: "[a]s a matter of fact, 50 years is only a vivid way of putting it. Even after 50 years our policy will not change either. That is, for the first 50 years it cannot be changed and for the second there will be no need to change it."[54] Some Chinese officials have even suggested that China originally intended the guarantees about the maintenance of Hong Kong's previous capitalist system and way of life to apply indefinitely.[55] According to these accounts, it was only because of suggestions from Hong Kong that guarantees linked to a

52. HONG KONG BASIC LAW, *supra* note 1, pmbl. para. 2.

53. DENG XIAOPING, ON THE QUESTION OF HONG KONG 47, 61 (1993) (providing two instances where Deng Xiaoping has provided reassurance about the continuation of the "one country, two systems" policy beyond 2047).

54. *Id.* at 61.

55. CK Lau, *supra* note 42 (citing Wong Man-fong, a senior Chinese official involved in formulating policy on Hong Kong).

specific time period would carry more credibility that these guarantees were subsequently framed in terms of a fifty-year period.[56]

Viewed in this context, it seems unlikely that Article 5 of the Hong Kong Basic Law was ever intended to provide for an automatic end to "one country, two systems" and the imposition of a socialist system in Hong Kong after June 30, 2047. Instead, the reference to fifty years in the second clause of Article 5 should be read as referring only to the minimum period during which the guarantee against making any fundamental changes to Hong Kong's capitalist system and way of life applies. But, even this conclusion about the limited duration of Article 5's guarantee against change is not free from challenge, as it is possible to argue that other provisions in the Hong Kong Basic Law prevent any fundamental changes even after June 30, 2047.

Extensive efforts have been made to entrench large parts of the Hong Kong Basic Law. Yash Ghai notes that this statute is, in some respects, more difficult to amend than China's national constitution,[57] primarily because Article 159(4) purports to prohibit any amendment that would "contravene the established basic policies of the People's Republic of China regarding Hong Kong."[58] As already noted, these basic policies, originally stipulated in the Joint Declaration, cover everything from guarantees of human rights to Hong Kong's separate financial, economic, and legal systems.[59] In short, these policies cover almost anything that people worry China might attempt to take away from Hong Kong after June 30, 2047.

On one reading of the Hong Kong Basic Law, Article 159(4) appears to protect against any such changes even after June 30, 2047, because its prohibition on any amendments that would contravene these basic policies contains no expiration date, and arguably

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56. *Id.* (citing Wong Man-fong).

57. *See* Yash Ghai, *The Legal Foundations of Hong Kong's Autonomy: Building on Sand*, 29 ASIA PAC. J. PUB. ADMIN. 3, 7 (2007). Yash Ghai is an expert on Hong Kong Constitutional Law. Until his retirement in 2005, he was the Sir Y.K. Pao Professor of Public Law at the University of Hong Kong.

58. HONG KONG BASIC LAW, *supra* note 1, art. 159(4).

59. *See supra* notes 6-10.

continues to apply indefinitely. This, however, is probably too literal an interpretation of the wording of Article 159(4). Because the original guarantee in the Joint Declaration only stated that these basic policies would remain unchanged for the first fifty years after July 1, 1997,[60] Ghai persuasively argues that under a purposive interpretation of the Hong Kong Basic Law, the restriction on amendments imposed by Article 159(4) should be read as only applying for the same fifty-year period.[61] Under this interpretation, while "one country, two systems" can continue to exist after June 30, 2047, under the Hong Kong Basic Law, fundamental changes to how that policy is applied in practise will become possible, which are not, at least in theory, permissible before that date.

IV. SO, WHAT WILL HAPPEN TO HONG KONG AFTER 2047?

Thus far, this article's conclusion has been that much of the fears about what will happen after 2047—especially in relation to property rights—are misplaced, and nothing in the Hong Kong Basic Law automatically provides for the imposition of a socialist system in Hong Kong after that date. However, it should be acknowledged that once a literal interpretation of Article 159(4) is rejected—an interpretation which might have afforded Hong Kong some degree of protection beyond June 30, 2047—fundamental changes do become permissible under the Hong Kong Basic Law after that date. Moreover, there are many possible ways to amend the Hong Kong Basic Law (such as removing provisions protecting human rights or eroding the power of the judiciary) that, while still falling far short of imposing a socialist system, would so severely erode Hong Kong's separate system as to make it seem virtually meaningless.

Concern that such fundamental changes will be implemented in Hong Kong immediately after June 30, 2047, even if this runs counter to Deng Xiaoping's public statements on the subject, can only be

60. Joint Declaration, *supra* note 1, para. 3(12).

61. YASH GHAI, HONG KONG'S NEW CONSTITUTIONAL ORDER: THE RESUMPTION OF CHINESE SOVEREIGNTY AND THE BASIC LAW 143 (2d ed. 1999).

expected to increase as that date draws closer.[62] Pressure for China to provide more formal clarification that it will not implement such changes can also be expected to increase.

Thus far, the dialogue on how China could most effectively provide such clarification has focussed on amending the Hong Kong Basic Law. For example, to remove any possible doubt about the meaning of Article 5, Lee proposes adding a clause explicitly guaranteeing that the Hong Kong SAR's capitalist system and way of life will continue beyond June 30, 2047.[63] Chen suggests that the outdated provisions in the Hong Kong Basic Law could also be amended.[64]

Given the exhaustive nature of the Hong Kong Basic Law, Chen's argument is somewhat attractive. Consisting of 160 articles and three annexes, running to a total of more than 12,000 words, the Hong Kong Basic Law goes into much greater detail than is usual among constitutional documents.[65] While the document's comprehensive format helped provide reassurance about Hong Kong's future, it also resulted in the drafters including provisions that have already led to practical problems, as China has experienced some dramatic social and economic changes since the Hong Kong Basic Law was drafted in the 1980s.[66]

For instance, due to generous provisions in the Hong Kong Basic Law, Hong Kong's medical services related to childbirth are now

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62. Gary Cheung, *Experts Pinpoint Further Uncertainties Over Law Amendments 'Could End Doubts on Financing and Rights,'* S. CHINA MORNING POST, Apr. 14, 2005, 2005 WLNR 5849170 (quoting Priscilla Leung Mei-fun, former Deputy Dean of City University's School of Law, "[s]ome mainland legal experts have suggested that some people in Hong Kong may be hesitant to buy flats in the 2020s or 2030s because they are worried about what will happen after the 50-year lifespan of the 'one country, two systems' formula expires in 2047").

63. Lee, *supra* note 27, at 185.

64. *See Backchat*, *supra* note 37, at 20:20-20:50.

65. For example, the Hong Kong Basic Law is almost three times longer than the U.S. Constitution, which consists of only 4,400 words. *Compare* HONG KONG BASIC LAW *with* U.S. CONST.

66. Social and economic changes discussed *infra* notes 67-72 and accompanying text.

stretched to their limit. Each year, Hong Kong receives an influx of tens of thousands of mainland Chinese mothers, who are often accused of crowding Hong Kong mothers out of local hospitals.[67] One of the main reasons why so many mainland Chinese mothers choose to give birth in Hong Kong is to take advantage of generous provisions in the Hong Kong Basic Law granting permanent residency rights to all Chinese children born in Hong Kong, even if their parents are not local residents.[68] It is a problem that no one seems to have foreseen when the Hong Kong Basic Law was written in the 1980s, a time when travel in China was still heavily restricted and very few mainland Chinese women were able to travel to Hong Kong to give birth. Now, by contrast, it has become a serious social problem in Hong Kong that has led to protests by local mothers, and can only be fundamentally addressed by changing the relevant provision in the Hong Kong Basic Law.[69]

Chen also cites another provision in the Hong Kong Basic Law which he believes to be outdated—the provision that guarantees the continued existence of the Hong Kong dollar as a separate currency.[70] In the 1980s, at the time the Hong Kong Basic Law was written, the Chinese economy was much weaker and less open than it is today.[71]

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67. Dennis Chong, *Birth Pains*, THE STANDARD (Apr. 15, 2011), http://www.thestandard.com/hk/news_details.asp?pp_cat=36&art_id=110208&sid=32037222&con_type=3&d_str=20110415&sear_year=2011.

68. *See* HONG KONG BASIC LAW, *supra* note 1, art. 24(2)(1).

69. *See* Dennis Chong, *supra* note 67 (discussing the social and economic implications surrounding the high number of Chinese women giving birth in Hong Kong). The Hong Kong Government tried to address the problem by amending domestic legislation to limit permanent residency rights to cases where at least one of the child's parents has residency rights. Immigration (Amendment) (No. 2) Ordinance, No. 31 (1997) (which established different criteria for permanent resident status). However, the Hong Kong Court of Final Appeal subsequently invalidated a portion of the amendment, as it was inconsistent with the wording of Article 24(2)(1) of the Hong Kong Basic Law. *Director of Immigration v. Chong Fung Yuen* (2001) 4 H.K.C.F.A.R. 211 (C.F.A.).

70. HONG KONG BASIC LAW, *supra* note 1, art. 111; *Backchat*, *supra* note 37, at 36:55-37:25.

71. *See* Nicholas R. Lardy, *China's Economy: Problems and Prospects*, 12 NEWSL. FOREIGN POL'Y RES. INST.'S WACHMAN CENTER 4 (2007); *Backchat*, *supra*

Due to the weak state of the Chinese economy, guaranteeing the continued existence of the Hong Kong dollar as a separate currency seemed vital to Hong Kong's survival as an international financial centre. Now, by contrast, with the Chinese Renminbi appreciating against other international currencies and already widely circulating in Hong Kong,[72] it is another provision that may arguably be considered outdated by the time 2047 arrives.[73]

Based on the analysis above, June 30, 2047, should be seen as an opportunity rather than a threat, as it provides Hong Kong with an opportunity to rid itself of any shackles imposed by any outdated provisions in the Hong Kong Basic Law, while preserving the bulk of the provisions in the Hong Kong Basic Law that protect the "one country, two systems" concept.

To reach a consensus on which provisions in the Hong Kong Basic Law should be retained and which ones should be changed, some kind of consultation process, or perhaps even a constitutional convention in Hong Kong prior to 2047 would be required. Such a consultation process could be modelled after the original process of writing the Hong Kong Basic Law during the 1980s, which involved the publication of two initial drafts and extensive public consultation in Hong Kong.[74]

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note 37, at 22:15-23:00.

72. Mark Konyn, *All Eyes on Renminbi in Hong Kong*, FINANCIAL TIMES, (Aug. 1, 2010), http://www.ft.com/cms/s/0/21ad4b98-9c02-11df-a7a400144feab49a.html#axzz1QhiIIIlo.

73. *Backchat*, *supra* note 37, at 36:55-37:30.

74. The Drafting Committee for the Basic Law issued the first draft "for solicitation of opinions" in April 1988. DRAFTING COMMITTEE FOR THE BASIC LAW, THE DRAFT BASIC LAW OF THE HONK KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (FOR SOLICITATION OF OPINIONS) (1988), *available at* http://sunzi.lib.hku.hk/bldho/BL0084.pdf. Once the five-month public consultation period ended, the Basic Law Consultative Committee had received approximately 74,000 submissions. Ming K. Chan, *Democracy Derailed: Realpolitik in the Making of the Hong Kong Basic Law, 1985-90*, *in* THE HONG KONG BASIC LAW: BLUEPRINT FOR "STABILITY AND PROSPERITY" UNDER CHINESE SOVEREIGNTY, *supra* note 46, at 4 (citing BASIC LAW CONSULTATIVE COMMITTEE, OFFICIAL REPORT: REFERENCE PAPERS FOR THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (DRAFT)

However, a cautionary message can be taken from the 1980s consultation process, which demonstrated how consensus in Hong Kong on a particular proposal is no guarantee that it will be accepted by Beijing.[75] There is no guarantee that the outcome would be any different if a similar consultation exercise were to be conducted in the near future to try and reach a consensus on the changes that should be made after June 30, 2047. Joseph Cheng, the Chair Professor of Political Science at the City University of Hong Kong, warns that such an exercise could prove "very dangerous," as China could use it as an excuse to implement changes to other aspects of Hong Kong's existing way of life with which it is uncomfortable.[76] To take just one important example, the power of final adjudication currently granted to the Hong Kong courts could prove particularly vulnerable to abolition, because it is rare in autonomous areas elsewhere in the world,[77] and it has resulted in a number of court rulings with which China strongly disagrees.[78]

Under a purposive interpretation of Article 159(4), China is not precluded from unilaterally introducing its own amendments to the Hong Kong Basic Law after June 30, 2047, and it would not have to wait until a convention to introduce amendments. However, the risk of China introducing changes after June 30, 2047, will be far greater if Hong Kong opens up the issue of making changes by putting forth its own list of proposed amendments.

(Feb. 1989)); MING K. CHAN, PRECARIOUS BALANCE: HONG KONG BETWEEN CHINA AND BRITAIN, 1842-1992 207 (1997).

75. For an example of how consensus in Hong Kong regarding a particular issue does not guarantee Beijing's approval, see MARK ROBERTI, THE FALL OF HONG KONG 268-75 (1996). *See also* Ming K. Chan, *supra* note 74, at 15 (discussing China's refusal to even consider a proposal known as the Omelco Consensus, which enjoyed widespread support in Hong Kong, and would have seen all members of Hong Kong's legislature popularly elected by 2003).

76. *See Backchat*, *supra* note 37, at 38:40-39:40.

77. HERZER, *supra* note 18, at 12.

78. For example, the Court of Final Appeal's ruling in the *Director of Immigration v. Chong Fung Yuen*, (2001) 4 H.K.C.F.A.R. 211 prompted a public expression of "deep concern" from Chinese authorities. *HK Government: Abode Right Case is Over*, PEOPLE'S DAILY ONLINE (July 22, 2001), http://english.peopledaily.com.cn/english/200107/22/print20010722_75534.html.

Indeed, if, as Deng Xiaoping's public statements suggest, China has no intention of making major changes in Hong Kong after June 30, 2047, it may prove reluctant to consider making even the more minor amendments to Article 5 of the Hong Kong Basic Law that many consider necessary to remove any uncertainty about the continued existence of the "one country, two systems" beyond that date. Since 1997, whenever the issue of amending the Hong Kong Basic Law has arisen, China has always proved reluctant to contemplate such a step.[79] There is no guarantee that this reluctance would necessarily disappear in the run-up to June 30, 2047. Chen suggests that China might instead prefer to remove any uncertainty about Hong Kong's future after that date by issuing a separate Decision of the National People's Congress on this point.[80] In China, such decisions serve as a supplement to the original law.[81]

While "one country, two systems" can continue to exist after June 30, 2047, under the Hong Kong Basic Law, fundamental changes to how that policy is applied in practise will become possible which are not, at least in theory, permissible before that date. As mentioned previously, the only legal protection against fundamental changes prior to June 30, 2047, is the provision in Article 159(4), which seeks to entrench large parts of the Hong Kong Basic Law against fundamental change for the first fifty years after 1997. But, the Hong Kong Basic Law is a law enacted by the National People's Congress (or NPC), a sovereign legislature under China's constitution.[82] Just as

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79. China demonstrated its reluctance to contemplate an amendment after the Court of Final Appeal interpreted Article 22(4) and 24(2)(3) of the Hong Kong Basic Law in a way which might have potentially permitted more than one million China-born children with a Hong Kong parent to exercise permanent residency rights in Hong Kong. *Ng Ka Ling and Others v. Director of Immigration* (1999) 2 H.K.C.F.A.R. 4 (C.F.A.). Instead of amending the Hong Kong Basic Law, the Standing Committee of the National People's Congress sought a fresh interpretation of these provisions. *See* Yash Ghai, *The NPC Interpretation and Its Consequences*, *in* HONG KONG'S CONSTITUTIONAL DEBATE: CONFLICT OVER INTERPRETATION, *supra* note 79, at 199-215.

80. *Backchat*, *supra* note 37, at 20:20-20:50.

81. *See* ALBERT H. Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 110 (3d ed. 2004).

82. HONG KONG BASIC LAW, *supra* note 1, pmbl., para. 3 ("the National

the doctrine of parliamentary sovereignty has traditionally meant there are no legal limits on the power of the British parliament to amend or repeal any law,[83] Chen argues that, in China, a doctrine of Congressional supremacy means that the National People's Congress's power "to make or unmake any law whatsoever on any matter whatsoever" is unlimited.[84]

While any new law that attempts to implement fundamental changes in Hong Kong prior to June 30, 2047, would undoubtedly be politically controversial,[85] it would not necessarily be unlawful. Instead, as a sovereign legislature, the NPC would simply be exercising its lawful power to repeal the contrary provision contained in Article 159(4), which purports to prevent such changes. As Ling notes, the attempt to protect large parts of the Hong Kong Basic Law against fundamental change for the first fifty years after 1997, is "not legally binding on a future NPC."[86]

This is not the only way which changes could be implemented prior to June 30, 2047, should China wish to do so. Under Article

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People's Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, prescribing the systems to be practised in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong."); CHINA CONSTITUTION, *supra* note 1, arts. 2, 57 (1982).

83. See the classic statement on the absolute sovereignty of the U.K. Parliament, originally put forward by the famous 19th century jurist A.V. Dicey, restated in STANLEY DE SMITH & RODNEY BRAZIER, CONSTITUTIONAL AND ADMINISTRATIVE LAW 67 (8th ed., 1998).

84. Albert H.Y. Chen, *The Court of Final Appeal's Ruling in the 'Illegal Migrant' Children Case: Congressional Supremacy and Judicial Review*, *in* HONG KONG'S CONSTITUTIONAL DEBATE: CONFLICT OVER INTERPRETATION, *supra* note 79, at 80.

85. It would also be a breach of China's international treaty obligations under Article 3(12) of the Joint Declaration, which states that the basic policies implementing "one country, two systems" will remain unchanged for fifty years after June 30, 1997.

86. Bing Ling, *The Proper Law for the Conflict between the Basic Law and Other Legislative Acts of the National People's Congress*, *in* HONG KONG'S CONSTITUTIONAL DEBATE: CONFLICT OVER INTERPRETATION, *supra* note 79, at 151, 163. Professor Ling is a Professor in the Faculty of Law at the Chinese University of Hong Kong.

158(1), the Standing Committee of the NPC, the smaller permanent arm of China's legislature, also has the power to issue binding interpretations of the Hong Kong Basic Law.[87] Since 1997, the Standing Committee has used this power to issue interpretations that have: (1) reversed the effects of a court judgment;[88] (2) given Beijing the power to determine changes to the system for electing Hong Kong's legislature;[89] and (3) rewritten the literal meaning of another provision in the Hong Kong Basic Law.[90] In *Lau Kong Yung v. Director of Immigration*, Hong Kong's highest court affirmed the "unqualified" nature of this power.[91] Unlike the power of amendment, exercised by the full NPC under Article 159, the Standing

87. This power is part of a general principle under the Chinese legal system under which the power of interpretation is primarily vested with a representative of the body that originally enacted the law, rather than the courts. *See* PETER HOWARD CORNE, FOREIGN INVESTMENT IN CHINA: THE ADMINISTRATIVE LEGAL SYSTEM 135-45 (1997).

88. On June 26, 1999, the Standing Committee issued its interpretation of certain parts of the Hong Kong Basic Law and reversed the effect of large parts of the *Ng Ka Ling* judgment. *See supra* note 79 and accompanying text; Interpretation of Articles 22(4) and 24(2)(3) of the Basic Law (adopted by the Standing Comm. Nat'l People's Cong., June 26, 1999) (1999).

89. Interpretation of Clause 7 of Annex 1 and Clause 3 of Annex 2 of the Basic Law (adopted by the Standing Comm. Nat'l People's Cong., Apr. 6, 2004). The interpretation established that any amendments to Annex I or Annex II of the Basic Law would require the National People's Congress Standing Committee's approval as a prerequisite. Mark R. Conrad, *Interpreting Hong Kong's Basic Law: A Case for Cases*, 23 UCLA PAC. BASIN L.J. 1, 2 (2005).

90. Interpretation of Paragraph 2, Article 53 of the Basic Law (adopted by the Standing Comm. Nat'l People's Cong., Apr. 27, 2005). This interpretation held that, where, prior to 2007, a Chief Executive did not complete his full, five-year term of office, the new Chief Executive should only serve the remaining portion of that five-year period. This runs counter to the literal meaning of Article 46 of the Hong Kong Basic Law, which stipulates a five-year term of office for all Chief Executives.

91. Lau Kong Yung v. Director of Immigration (1999) 2 H.K.C.F.A.R. 300, 323. For criticism of this decision, see Danny Gittings, *Hong Kong's Courts are Learning to Live with China*, HONG KONG J. 1, 6 (July 2010), http://www.hkjournal.org/PDF/2010_fall/2.pdf.

Committee's power of interpretation is not subject to any substantive or major procedural constraints.[92]

As such, should China ever decide to introduce fundamental changes to the way "one country, two systems" is implemented in Hong Kong, a fresh interpretation by the Standing Committee of the relevant provisions in the Hong Kong Basic Law would provide a quick and lawful means of doing so, even prior to June 30, 2047. That is not to suggest this is likely to happen anytime soon. Since 1997, the Standing Committee has interpreted the Hong Kong Basic Law on only four occasions,[93] suggesting it is a power that is exercised sparingly. But, it does reinforce the fact that if fundamental change does come to Hong Kong at some point in future, it need not necessarily be in 2047, thereby undermining the importance of June 30, 2047.

V. CONCLUSION

While the importance of June 30, 2047, to Hong Kong's future should not be dismissed, it should not be exaggerated. As shown, radical change is far from inevitable immediately after that date, and change is not necessarily the most likely scenario. Much will most likely depend on decisions that have yet to be made by future generations of Chinese leaders in coming decades, balancing the advantages and disadvantages of maintaining or changing Hong Kong's present system.

A historical parallel is instructive. Prior to July 1, 1997, there were many apocalyptic forecasts of the radical changes that were expected to occur in Hong Kong immediately after China's resumption of sovereignty.[94] Ultimately, these changes failed to

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92. Article 158(4) contains the only constraint. Pursuant to this section, the Standing Committee is required to consult the Committee for the Basic Law prior to issuing an interpretation. *See supra* text accompanying note 36.

93. STANDING COMM. NAT'L PEOPLE'S CONG., INTERPRETATION OF PARAGRAPH 1, ARTICLE 13 AND ARTICLE 19 OF THE BASIC LAW (Aug. 26, 2011); *see also supra* text accompanying notes 88-90.

94. *See, e.g.*, Louis Kraar & Joe McGowan, *The Death of Hong Kong*, FORTUNE (June 26, 1995), http://money.cnn.com/magazines/fortune/fortune_

materialise, and July 1, 1997, saw a high degree of continuity, especially in Hong Kong's legal system.[95] Instead, change has been a more gradual process, beginning long before 1997 and continuing through to today.[96] Although it is far too early to be certain, there is no reason necessarily to expect 2047 to be any different.

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archive/1995/06/26/203948/index.htm. Kraar and McGowan's cover story is one of the most famous examples, and the same magazine subsequently retracted it. Sheridan Prasso, *Oops! Hong Kong is Hardly Dead*, FORTUNE (June 28, 2007), http://money.cnn.com/magazines/fortune/fortune_archive/2007/07/09/100122332/index.htm.

95. Under the provisions of the Hong Kong Basic Law, most aspects of the legal and judicial system were unaffected by the transfer of sovereignty to China. The main exception was the creation of a Court of Final Appeal under Article 82 of the Hong Kong Basic Law. Pursuant to Article 82, the Court of Final Appeal assumed the power of final adjudication, a power that the Judicial Committee of the Privy Council in London previously exercised. HONG KONG BASIC LAW, *supra* note 1, arts. 8, 81(2), 82, 86, 87, 91, 93(1), 160; Albert H.Y. Chen, *Constitutional Adjudication in Post-1997 Hong Kong*, 15 PAC. RIM L. & POL'Y J. 627, 634 (2006).

96. *See* Danny Gittings, *Changing Expectations: How the Rule of Law Fared in the First Decade of the Hong Kong SAR*, H.K. J. 1, 3-4 (2007), http://www.hkjournal.org/pdf/2007_fall/2.pdf.