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HONG KONG: HOW BEIJING PERFECTED REPRESSION

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The situation in Hong Kong before the recent crackdown is well known. Long at or near the top of global rankings for basic freedoms and the rule of law, Hong Kong has been a center of global finance, arts and culture that has captured the world's imagination. Hostile to liberal constitutionalism and the values that it represents, the government of the People's Republic of China (PRC) in Beijing moved in mid-2020 to crush these guarantees. Its weapon of choice for doing so was the new Hong Kong National Security Law (NSL).¹

In the months since, nearly the entire pandemocratic opposition in Hong Kong has been arrested or has fled into exile. Opposition organizations of all stripes have been shuttered. The press and the universities have largely been cowed into silence. The courts and the legal profession are under attack. Hong Kong has now become a place where those who speak out against such draconian measures await the midnight knock. Beijing has tried to rationalize its harsh crackdown on free expression by repeatedly asserting that all countries have laws to protect national security. Yet Beijing has never tried to offer any serious justification for the extreme measures that are being taken under the NSL.

Before the 1997 handover of Hong Kong from Britain to the PRC, Beijing promised (under a formula called "one country, two systems") to preserve the city's way of life for at least fifty years by giving it a "high degree of autonomy" and by respecting its core values of human rights and the rule of law.² These commitments were included in the Basic Law,

which was promulgated in 1990. Article 18 of the Basic Law declared that mainland laws (with some specified exceptions) were not to apply in Hong Kong. Article 22 decreed that mainland officials were not to “interfere in the affairs which the Hong Kong Special Administrative Region [HKSAR] administers on its own in accordance with this Law.” Under Article 23, Hong Kong was to enact national-security laws “on its own.” Articles 45 and 68 called “universal suffrage” the “ultimate aim” as the method for choosing both the chief executive and the entire legislature of the HKSAR. Article 85 specified that the HKSAR’s courts “shall exercise judicial power independently, free from any interference.”

In view of these commitments, foreign governments recognized Hong Kong as a distinct entity for purposes of trade and other exchanges. Hong Kong’s status as an open society ruled by law remained intact. It appeared at the top of the Heritage Foundation’s Index of Economic Freedom and rated high on the World Justice Project’s Rule of Law Index as well. Yet Beijing dragged its feet on promised democratic reforms, and never gave up its control over the interpretation of the Basic Law or its insistence on relegating Hong Kong’s court system to a subordinate role.³

The PRC’s recent takeover was preceded by recurrent creeping interventions through which Beijing sought to encroach upon Hong Kong’s autonomy.⁴ Far from guarding the city’s rights, Hong Kong’s Beijing-subservient local officials facilitated the PRC’s interference, while Hong Kong civil society groups repeatedly took to the streets en masse to defend core liberal-democratic values and their city’s ability to keep living under them. In 2003, Beijing launched its first encroachment following the handover. Acting at the PRC’s behest, the HKSAR government proposed an illiberal enabling law for Article 23 (the national-security provision) of the Basic Law. Massive protests—a demonstration on July 1 drew as many as half a million people—caused the bill to be withdrawn, and exactly one year later energized prodemocratic forces held a similarly huge demonstration to call for the adoption of universal suffrage.

The pattern of encroachment and pushback came to dominate Hong Kong’s politics. The government would press forward some draconian proposal desired by Beijing, and the people of Hong Kong would push back by voicing their own demands for democracy, understood as both a universal value and a particular safeguard for their city’s autonomy and way of life. In 2012, authorities proposed a scheme for “patriotic education,” and within two years the Umbrella Movement (so called for the way demonstrators used umbrellas to fend off police tear gas) was marching for democratic reform. In 2019, a proposed extradition bill that would have exposed any Hong Kong person to mainland charges was also withdrawn after large protests that denounced the law and called for democracy and police accountability. Beijing had only itself to blame for growing opposition.

The current crackdown began with the aggressive crushing of the 2019 protests and culminated in Beijing's direct imposition of the NSL the following year.⁵ This law replaces the liberal constitutional order promised in the Basic Law with what is effectively a national-security constitution based on the NSL and the 1982 PRC Constitution. Beijing seeks to justify this imposition by asserting its inherent sovereign authority to govern Hong Kong as it wishes.⁶ To accept that reasoning, however, would be to undermine the very foundation of Hong Kong's separate system and make nonsense of the many guarantees that the PRC has offered under the "one country, two systems" rubric. Hong Kong's comprehensive transformation reflects an effort, common to autocratic regimes, "to hollow out from within critical institutions safeguarding fundamental freedoms."⁷

Degrading the Rule of Law

The Chinese Communist Party (CCP) regime in Beijing imposed the NSL to end democratic pushback from within Hong Kong and bring the former British colony to heel at last. For the regime, the law functions as a kind of antidemocratic "Swiss Army knife," bringing together in one package a number of tools designed to destroy hopes for liberty and self-government. The main tools are four vaguely defined crimes—secession, subversion, terrorist activities, and collusion with foreign forces—that serve as grounds for restricting freedom of speech, the right to assemble, and other basic rights. It is a frontal attack on freedom, the rule of law, and political opposition in Hong Kong. These four crimes apply worldwide to both residents and nonresidents. Punishments range from three years to life in prison. Hong Kong's people and its friends abroad have watched in despair as the city's leading voices for democracy and the rule of law have suffered arrest or forced exile. The reach of this oppressive law has been comprehensive, including street protesters, the media, academics, social organizations, the arts, and opposition politicians. There have been more than 150 arrests and a growing regulatory reach across the city in the year and several months since enactment.

The NSL was enacted on 30 June 2020, and the legal onslaught began the very next day—the first of July, the day historically associated with the largest prodemocracy demonstrations in the city's history. The first person arrested was Tong Ying Kit, a young protester who drove his motorcycle into cordons of police. Tried for terrorism and incitement to secession, he received a full trial and verdict under the NSL—the first of only two people to do so thus far. The secession case hinged on a flag his motorcycle carried with the popular slogan, "Liberate Hong Kong, Revolution of Our Times." A three-judge panel found him guilty of intending to promote Hong Kong's independence.⁸ Although both the Basic Law and Article 4 of the NSL call for continuing application of the

International Covenant on Civil and Political Rights, the court took no notice of the generally applicable human-rights standard for incitement, which requires 1) that a speaker imminently intends to spark violence; and 2) that such is likely to occur in the given speech setting. Tong Ying Kit's reckless vehicle operation landed him a further conviction for terrorist activities, although there was no evidence that his actions had inspired public action or fear. He received a nine-year jail term.⁹

Nearly all the remaining NSL cases awaiting trial involve political speech alone. Among the most notorious has been the prosecution of *Apple Daily* newspaper publisher Jimmy Lai. His alleged crime is collusion with foreign forces; the charges are presumably based on publications attacking the NSL and encouraging foreign interests to support freedom in Hong Kong. Several of his staff and editors have also been detained. Lai himself was arrested on 10 August 2020, and has languished in jail since that time. In February 2021, his application for bail was denied after going all the way to Hong Kong's Court of Final Appeal.¹⁰ The HKSAR police raided the offices of *Apple Daily* in June 2021, and eventually forced the paper to close.

Perhaps the most shocking prosecutions have been those brought against 47 opposition political figures. In these cases, the government has alleged that simply taking part in a July 2020 opposition-organized primary election constitutes conspiracy to commit subversion. The primary was designed to select the best candidates to run in the September 2020 Legislative Council (LegCo) election, although this balloting for the HKSAR's seventy-seat legislature was later postponed at Beijing's direction. Of the 47 people charged, 33 would eventually be denied bail and spend more than a year apiece in pretrial detention (as of this writing in December 2021, the case has been adjourned until 2022, with no trial date set). The subversion case revolves around a plan that some opposition politicians had devised to wield a possible LegCo majority and its authority over the budget—all according to the Basic Law's Article 52—to force the chief executive's resignation. It seems that only in Hong Kong does trying to hand the government a political defeat in a way allowed by the constitution amount to "subversion."

The HKSAR has also reportedly issued warrants for six overseas democracy activists. Five had fled into exile. The sixth, Samuel Chu, is a Hong Kong-born U.S. citizen who until August 2021 ran the U.S.-based Hong Kong Democracy Council.¹¹ His crime, it would seem, is that he lobbied his own government regarding Hong Kong. So far, no person targeted by an extraterritorial warrant has been arrested or returned to Hong Kong. Ten countries (Australia, Canada, Finland, France, Germany, Ireland, the Netherlands, New Zealand, the United Kingdom, and the United States) have opted to suspend their extradition agreements with the HKSAR.

The repressive policies that animate the NSL extend well beyond

that law. They include the relentless prosecutions under existing public-order laws of more 2,500 people who took part in the 2019 protests. This has been a convenient avenue of crackdown since the NSL itself is

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supposed to have no retroactive effect. Prosecutions under these prior public-order laws have targeted senior opposition politicians despite their consistent records of having urged nonviolent demonstrations only. Among those convicted so far is Hong Kong's "father of democracy," the prominent barrister Martin C.M. Lee. In April 2021, the octogenarian Lee was given an eleven-month sentence, suspended for two years. Several of his colleagues were sent straight to prison. Even the

old British sedition law, unused for decades, has been resurrected to apply to statements made prior to the NSL. Prosecutions have also become *ex post facto*, citing defendants' pre-NSL actions as evidence in denial-of-bail proceedings, during trials, and as sentences are being meted out.

The NSL suffers from much more than vague language. It represents a comprehensive threat to Hong Kong's autonomy, rule of law, and basic freedoms. One would be hard-pressed to devise a fuller plan to shut down an open society and inhibit freewheeling debate. Imposed without any public consultation, the NSL effectively stands above the Basic Law. The Court of Final Appeal made this clear in the Jimmy Lai case. Under the common law, Hong Kong courts have long applied a presumption of innocence to favor bail for those charged with crimes. The NSL presumes against bail, however, and the court expressly found in answer to Lai's bail application that it had no power to review the NSL for conformity with the Basic Law. This signals that any NSL deviation from human-rights standards will likely be allowed to stand.

Other NSL provisions undermine Basic Law commitments to autonomy and the rule of law, ignoring legal limits on mainland interference in Hong Kong affairs. The NSL creates a Committee for Safeguarding National Security and an Office for Safeguarding National Security, both of which are under the direct supervision of the PRC government. The former is chaired by the HKSAR chief executive and consists of local officials plus a senior national-security advisor from the mainland, named by Beijing. The latter is an organ of the PRC government, completely staffed by mainland officials. Both bodies work in secret, and the courts cannot review their actions.

The NSL likewise creates special national-security branches in both Hong Kong's police service and its justice department. These branches

too are secret, and act under chiefs named on the advice of the Office for Safeguarding National Security. One of the first tasks carried out by the Committee for Safeguarding National Security was to issue special regulations for police operations under the NSL. These regulations permit warrantless searches, the pulling of travel documents, property seizures, communications intercepts, and secret surveillance.¹² It would appear that Hong Kong's freshly minted secret police, both in the mainland Office for Safeguarding National Security and in the local special branches, have free rein to spy on and target opposition figures with little chance of judicial oversight.

The Courts and Bar Under Stress

Judicial independence and oversight are likewise compromised. Reflecting Beijing's distrust of Hong Kong's historically independent judges, the NSL provides that only judges designated by the chief executive can hear NSL cases. If a designated judge makes any statement that officials believe offends national security, then they can remove that judge from the list of NSL judges. The Hong Kong justice secretary can also deny a jury trial in High Court cases where juries are typically allowed, directing instead the use of a three-judge panel such as the one that heard Tong Ying Kit's case.

On top of these structural limits, Beijing has been launching open media attacks on any jurists deemed to be standing in the way of government efforts to deny bail or secure convictions. In Jimmy Lai's case, the mainland *People's Daily* condemned the trial court's decision to grant bail and made a veiled but serious threat that if the Court of Final Appeal too allowed bail, the case might be transferred to the mainland.¹³ The threat was genuine because Article 55 of the NSL permits the transfer of certain complicated cases to mainland courts. The determining authority is not a court, but the Office for Safeguarding National Security with the approval of the PRC government in Beijing.

Hong Kong's legal profession likewise feels pressure under the NSL. The *People's Daily* recently called the Hong Kong Bar Association a "street rat" and warned the Law Society to stay out of politics ahead of its leadership election—a view echoed by HKSAR justice secretary Teresa Cheng.¹⁴ The Bar Association is widely respected for taking seriously its responsibility to defend the rule of law. When Paul Harris, its head at the time, suggested revising the NSL to bring it into line with the Basic Law's guarantees, he was widely criticized in the official press. So was LegCo member Dennis Kwok, who represented the legal profession as one of Hong Kong's "functional sectors," when he used parliamentary maneuvers to block a bill making it a crime to disrespect the PRC national anthem. Kwok was eventually expelled from LegCo along with three other lawmakers, and went into exile. All the remaining

opposition legislators resigned in protest after the Kwok expulsion. The anthem law passed in June 2020.

Lawyers were active in providing representation for the 2019 protesters and defending basic rights generally. In the face of attacks on themselves and other civil society groups, such groups as the Progressive Lawyers Group and the 612 Humanitarian Relief Fund (which provided legal and other support to arrested protesters) have disbanded. Even government-funded legal-aid services have been affected, with the government offering new guidelines that would deny criminal defendants seeking aid the right to choose their own lawyers, and would also make judicial review harder to obtain. Legal academics once known for speaking out on human-rights issues have, with few exceptions, gone silent.

Undercutting Academic Freedom

Beijing has long been unhappy with Hong Kong's youthful opposition and has sought to impose a more patriotic brand of education. In 2012, long before the imposition of the NSL, the HKSAR government at Beijing's urging put forth proposals for national education. The reasoning seemed to be that liberal education had been the basis for public support of the massive 2003 and 2004 protests, not to mention a smaller protest outbreak in 2009. The 2012 proposal backfired, with demonstrators as young as fourteen condemning it as brainwashing. The government backed down, but its move had stirred the rise of a new generation of young protesters.

The NSL reflects Beijing's longstanding worries about how young people are educated in Hong Kong. Article 9 of the law makes the Hong Kong government responsible for "necessary measures to strengthen public communication, guidance, supervision, and regulation . . . relating to schools, universities, social organizations, the media, and the internet." Under Article 10, the government is to educate for national security in schools and beyond. New regulations now require schools at all levels to teach national security, and various official statements have warned universities and the media about possible violations.¹⁵ Beijing's official media have attacked professors who speak out as reactionaries, and in November 2020 the police set up an email, text, and messaging-app hotline to encourage people to report one another for violating the NSL.

In July 2020, Benny Tai was fired from his job teaching law at the University of Hong Kong. The year before, he had been convicted on public-nuisance charges for his involvement in the 2014 Umbrella Movement. In January 2021, he was charged under the NSL for his role in organizing the LegCo prodemocratic primary of 2019. Beijing media attacked Tai's dean, Johannes Chan, for allegedly supporting the dissident professor. Throughout Hong Kong, top university leaders have of-

ferred little resistance to government pressures and directives. A culture of fear and self-censorship grips campuses.

Intimidation is sometimes aimed directly at students. The ruling council of the University of Hong Kong, overriding academic-discipline procedures, barred several student leaders from campus in reaction to the Student Union's passage of a sympathy resolution mourning someone who had committed suicide after having attacked a police officer. The students later apologized for the resolution, but four Student Union leaders were arrested under the NSL and charged with promoting terrorism—though three were initially denied bail, they were later allowed it after each had spent more than a month in jail.

Schools below the college level have not escaped either. With the local NSL education regulations in place, Beijing in mid-2021 accused the Professional Teachers' Union (PTU) of being too political and charged that schoolteachers in Hong Kong were brainwashing their students to turn them against China. Echoing mainland-style purge rhetoric, both China's Xinhua News Agency and the *People's Daily* called the PTU, almost a half-century old and with nearly a hundred-thousand members, a "malignant tumor."¹⁶ The HKSAR government then ended its decades-long relationship with the union while the police announced a criminal investigation. In August 2021, the PTU disbanded. Beijing officials have made clear that leading members should still be investigated. Added to all this, the government announced in November 2021 that it will emphasize nine moral and civic values in all primary and secondary courses. Law-abidingness and PRC national identity will be stressed, while such staples of traditional Hong Kong civic education as human rights and critical thinking will be omitted. These attacks on academic freedom have already left their mark, with the Global Public Policy Institute's worldwide Academic Freedom Index giving Hong Kong a D rating.¹⁷

Civil Society Under Pressure

A broad spectrum of civil society and labor organizations are also feeling the heat. Organizations such as the Labor Party, the Confederation of Trade Unions, the Social Workers General Union, the League of Social Democrats, and the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China (which had organized the annual June 4 vigils commemorating the 1989 Tiananmen Square massacre until these were banned) came in for official condemnation and have mostly disbanded. Under the NSL's foreign-collusion language, these organizations and their members have been subject to investigation for having received funding from abroad. The most visible targets have been the Civil Human Rights Front (CHRF) and the Alliance, noted especially for organizing protests. Leaders of both

organizations have been arrested for protest activity and are now in jail. So far, more than fifty local NGOs have shut down.¹⁸

The CHRF, which for nineteen years had been an umbrella organization uniting many prodemocracy groups in the handling of protest logistics, came under severe pressure. It had for years cooperated with the government to submit proper applications for the many peaceful protest marches that it organized, and was noted for its insistence on nonviolence. On 10 December 2019, I interviewed a CHRF leader who described efforts that day to organize one of the first protests to have been permitted on Hong Kong Island in months. The CHRF had persuaded the police that eschewing aggressive enforcement tactics would ensure a peaceful protest—as in fact occurred.

In 2021, no such example of official tolerance toward the CHRF could be found. In March, rumors surfaced that the police were investigating the CHRF under the NSL. In May, CHRF convener Figo Chan Ho-wun got eighteen months in jail for taking part in an unauthorized 2019 demonstration. After that, Beijing's Hong Kong and Macau Affairs Office accused the organization of colluding with foreign forces and attempting to foment a "color revolution." Under pressure from Beijing, the HKSAR police repeatedly signaled their intention, even after the organization folded, to investigate the group's leaders for criminal behavior. The PTU and several other organizations withdrew from the CHRF and then it, like the PTU, disbanded—also in August 2021.

United Nations experts have complained that in Hong Kong today, "terrorism and sedition charges are being improperly used to stifle the exercise of fundamental rights, which are protected under international law, including freedom of expression and opinion, freedom of peaceful assembly and the right to participate in public affairs."¹⁹ Local efforts to prohibit foreign funding have come under UN criticism as well.

In the end, Hong Kong's local business elite may also find itself a target. One can imagine that this will begin with people in the pro-Beijing establishment attacking one another for lacking patriotic zeal—some in the pro-Beijing camp are already calling others "loyal rubbish." The establishment camp, generally made up of local business elites, has often vocally supported Beijing's aggressive policies, seeing them as promising to better secure their own positions in the ruling sector. Indeed, Beijing does hand out prized spots on influential local committees and other types of "connections" that can help anyone who has business to do in Hong Kong or on the mainland. Yet Beijing naturally regards mainland companies as safer and more pliable. As these come increasingly to dominate the Hong Kong market, local elites face the risk that their masters in Beijing will discard them. In view of this, some Hong Kong businesspeople have begun moving their investments overseas. In the same vein, many foreigners operating in Hong Kong are likewise hedging their bets.

Prominent overseas human-rights organizations such as Human Rights Watch, the U.S. National Endowment for Democracy, the Hong Kong Democracy Council, and Amnesty International have also been attacked in state media and targeted for sanctions. On 25 October 2021, Amnesty International announced that it would be closing its offices in Hong Kong.

Censoring the Media

Local news organizations, art exhibits, and critical documentaries have also been targeted, as has social media. The campaign against *Apple Daily* is the most notorious case in point. Not only was Jimmy Lai arrested and prosecuted, but the paper's other key executives were detained on collusion charges under the NSL, its offices were raided, editors were detained, and the paper's assets were frozen. The asset freeze proved fatal, and more than a thousand workers lost their jobs.

The city's independent public broadcaster, Radio Television Hong Kong (RTHK), modeled on the BBC, was brought to heel when the government made a civil servant with no media experience its director of broadcasting. Several contributing reporters were dismissed, and documentary and public-affairs shows critical of the government or the police were canceled. Now RTHK is being partnered with the PRC's state-run CCTV so that programming aired in the city will do more, as HKSAR chief executive Carrie Lam puts it, to "nurture a stronger sense of patriotism."²⁰ Lam has also announced that RTHK will produce its own programming on the importance of national security. The new management, meanwhile, has issued a set of editorial guidelines that totals more than a hundred pages and imposes NSL restrictions along with strict top-down editorial control.²¹

The Hong Kong Journalists' Association (HKJA) has condemned these moves, but is itself at risk and reasonably fears that it too will soon be forced to disband. The Beijing-controlled newspaper *Wen Wei Po* has already attacked the group of news professionals as an "antigovernment political organization." The paper accused the HKJA of "wantonly smearing the Hong Kong government, the police and the national security law."²² Since mainland attacks are often followed by local enforcement, HKJA's future is bleak.

Other signs of the closing media space abound. Bookstores, libraries, schools, makers of documentary films, and movie theaters all face strict censorship relating to national security. The new amendment to the film-censorship law allows no appeal when a film is banned for national-security reasons. The government is now proposing enactment of a law that would ban "fake news." Many fear that the law will be used to target critical reports.

Perhaps the most notorious free-speech case, aside from the destruction of *Apple Daily*, has been the arrest of two speech therapists, Lai

Man-ling and Melody Yeung, along with three other members of the General Union of Hong Kong Speech Therapists, for publishing a children's book about sheep who come under attack by wolves. Presumably the Hong Kong and Beijing governments know who the wolves are.

Under the NSL's Article 54, the Office for Safeguarding National Security can extend the regime's tight control over civic groups and news agencies to foreign NGOs and outside news organizations that work in Hong Kong. Seeing the risk, the *New York Times* has already moved some of its operations away from Hong Kong. The vaguely written laws will inevitably have a chilling effect on media that might otherwise be willing to publish reports critical of the government.

Adulterating the Democratic Process

As if it were not apparent enough, the intention to shut all opposition to the government out of public life became even clearer in March 2021, when Beijing again intruded directly on the Hong Kong system to amend the Basic Law's electoral provisions.²³ The changes expand Hong Kong's Election Committee (EC)—a body long dominated by “patriots” and other Beijing-friendly types—from 1,200 to 1,500 members. The EC, moreover, will no longer merely select the chief executive, but will also have the power to nominate all LegCo candidates and will choose nearly half of LegCo's members.

The three-hundred new EC members are drawn from Beijing-appointed bodies that supposedly represent Hong Kong in the central government. Current officials are in many cases recommending or even outright choosing people who will have the power to reelect them. Representatives of Beijing-loyalist groups have taken the EC seats of 117 district-level elected officials. Voters from Hong Kong's corporatist “functional constituencies” and other pro-Beijing pockets dominate most of the remainder of the EC.

It is widely believed that Beijing took these drastic antidemocratic steps because its favored candidates were wiped out in the district-council (DC) elections of November 2019, when voters handed opposition candidates 90 percent of the seats. The DCs have little power, but their level of the HKSAR's government is the only one at which most seats are (or were) directly elected. Both Beijing and the opposition had cast the 2019 DC races as a referendum on the protests. Mortified by the protest camp's sweeping victory, the HKSAR government then moved to disqualify the elected opposition candidates based on a newly weaponized oath and loyalty test, resulting in most opposition district councilors—260 in all—resigning to avoid investigations and possible charges. Of the 196 who chose to stay and take the oath, 49 were eventually disqualified (as were six others who did not show up to take the oath) and dismissed, their loyalty in question. In the face of

all this, Chief Executive Lam had the temerity to ask why no opposition members were running in coming elections.

The new election law effectively bars the pandemocratic camp from the political process. In August 2021, it came out that three-quarters of those registering as candidates for the Election Committee would be running unopposed. This marked the arrival in Hong Kong of the electoral system that prevails on the mainland, where the norm is that the number of candidates barely exceeds the number of seats available. As an old quip goes, Beijing officials do not mind elections as long as they know the outcome in advance. The December 2021 LegCo “election” likewise saw no opposition parties participating. Beijing was reportedly pressing unopposed candidates themselves to recruit rivals to appear on the ballot to create the impression of a contest.

One need only glance at the onerous vetting process to grasp why so few oppositionists plan a future in electoral politics. Beijing is clearly taking no chances that there might be an electoral referendum on the NSL. Beyond the Election Committee, the Basic Law amendments also establish a seven-member Candidate Eligibility Review Committee, dominated by high officials, to vet individually every political candidate in the territory. That review committee will in turn be advised by the Committee for Safeguarding National Security, which in turn will be supported by investigations of every candidate by the national-security police unit. Investigators will work in secret, and disqualifications will not be subject to appeal. Candidates who suffer disqualification will not be told the grounds for it. The choice to run for office, in other words, will be a risky proposition that carries potentially serious consequences.

The chances of an opposition candidate clearing all these hurdles and getting elected in most of the “small-circle,” Beijing-friendly constituencies is nil. The Election Committee historically has been so stacked with Beijing loyalists that opposition candidates running for chief executive could muster no more than about a fifth of its votes. The new-model Election Committee will be even more tilted against the opposition, and now not only in the contest for chief executive but in some forty LegCo races as well.

Under the Basic Law amendments, LegCo is to go from seventy to ninety members, but the number of directly elected seats will plummet from thirty-five to just twenty. The functional sectors, crafted to ensure pro-Beijing control, will have thirty seats in total, while the Election Committee will directly fill the final forty seats. To prevent the embarrassment of voter protests by means of abstentions in the twenty races for directly elected seats, the HKSAR government has already passed a law making it a crime for anyone to openly advocate the boycotting of an election or the casting of a blank ballot, although individual voters may on their own still legally abstain or cast such a vote. Arrest warrants have already been issued against two exiled politicians who used

social media to advocate a boycott of what they characterized as a “sham election” for LegCo, and pollsters are now under investigation for even asking about the intention to vote.

Beijing’s Choice

For the CCP regime, the NSL represents a momentous strategic choice. The regime has no doubt made that choice with a view not only to Hong Kong, but also to the risks of dissent and democratic ferment both within China and around the world. When the CCP agreed to the Joint Declaration in 1984, it seemed to be doing so in a spirit of experimentation, of allowing one area, hived off from the rest of China, to flourish as a modern open society with an already established free market for goods and services and a competitive marketplace of ideas. The advantages of this were many, not only to gather experience in the ways of an open society, but also to gain a link to the outside world in the form of a city with one of the globe’s great harbors and a massive capacity to attract badly needed investment capital. This territory’s vigorous free press and excellent universities were sources of prestige, and brought hope that China itself would someday match these qualities. As an outside open society, sealed off from the mainland, Hong Kong was not expected to figure heavily in the PRC’s internal politics.

In recent years, Beijing has dialed back its own nascent experiments with private enterprise and open competition, and has not followed through with liberal political reforms. More insular and controlling at home and aligned with fellow autocratic regimes abroad, the CCP regime has interfered in Hong Kong, treating its core liberal institutions as threats and since 2019 crushing local pushback with the latest crackdown. That crackdown has left the city’s core institutions in tatters.

It is heartening that in early December 2021, the World Association of News Publishers awarded Jimmy Lai and the *Apple Daily* staff the annual Golden Pen of Freedom—a sign that Lai, his fellow journalists, and the cause of press freedom in Hong Kong are not forgotten. The challenge is to formulate an effective response to bring about appropriate behavior and to protect those in harm’s way.

Over recent decades, neither attempts to contain China nor engagement with it have produced significant dividends regarding the sort of human-rights and rule-of-law problems that we now see in Hong Kong. A regime whose grip on power depends on silencing all opposition is not going to change direction unless that grip on power is threatened. Given the CCP’s dependence on performance legitimacy flowing from economic growth, the only possible incentive to change would be a threat to that legitimacy. And yet, if recent experience is an indicator, the current regime is more likely to double down under pressure than it is to change.

It will be important to articulate policy aims, even if they current-

ly seem out of reach. The United States has suspended recognition of Hong Kong's distinct status. Clearly any restoration of such recognition should require Beijing to withdraw the NSL and to return to the promised path of political reform aiming at genuine universal suffrage. Political prisoners would have to be freed, too. None of these things is currently likely.

These limitations have led to a widespread view that economic policies which impact performance may be the only path to policy change, even if pushback is more likely. Applying U.S. laws regarding commercial dealings and human rights more forcefully may offer positive incentives to human-rights violators more generally, though any progress will surely hinge on such forcefulness spreading beyond U.S. policy to become multilateral. In any event, companies doing business in the United States should not be contributing to a crackdown in Hong Kong or anywhere else. The U.S. Commerce Department should more aggressively keep a list of companies that participate in or support human-rights violations, and should apply appropriate laws.

With short-term prospects of persuading Beijing to turn the corner on these policies looking scant, efforts to rescue those in harm's way may prove more fruitful. Until conditions in Hong Kong improve, opening the door wider to asylum and immigration will be the least that can be done. So far, the United States has not moved effectively or efficiently in this regard—the Safe Harbor Act and Freedom of Choice Act are still languishing in the U.S. Congress. Immigration policies that attract desired classes of immigrants may find great application regarding Hong Kong, with its ample pool of skilled workers. Canadian law offers a path to immigration for Hong Kongers with Canadian degrees. Since many of the protesters in Hong Kong were students, providing greater access to the United States for further studies and a path to immigration could be good for Hong Kongers and the United States alike.

What we see in Hong Kong has wider implications. The United States in December 2021 hosted meetings called the Summit for Democracy, about which Beijing has already been critical. Democracies will consider their own performances and how to push back against authoritarianism. The alternative to the U.S. model proffered by Beijing has surely taken shape in Hong Kong. We might expect Beijing's broader influence to focus on an authoritarian model that hollows out the liberal institutions the CCP so often attacks. Beijing already shows a preference for regimes that share this vision. Any effort by democracies to push back must articulate both the benefits of democracy and the limitations of the CCP model that the Hong Kong situation is now laying bare. If authoritarians are copycats, then democrats need to be copycats too, striving to understand what works—and what does not—when the forces of democracy are faced with new methods of repression.

NOTES

1. The National People's Congress (the PRC's legislature) adopted the NSL on 30 June 2020. For the law's text, see [www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_\(a406\)_en.pdf](http://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

2. For the formal joint declaration by London and Beijing (19 December 1984), see www.cmab.gov.hk/en/issues/jd2.htm. Although PRC officials often claim that the declaration was fulfilled upon the handover, the document's seventh article in fact binds both governments to fulfill all provisions for fifty years.

3. Basic Law, Article 158 assigns the power of interpretation to the Standing Committee of the National People's Congress, the PRC's national legislature in Beijing. Hong Kong's local courts are allowed to interpret the Basic Law while adjudicating cases. While local courts can review local legislation for conformity to the Basic Law, they are not allowed to review national legislation and are bound by the Standing Committee's rulings. *Lau Kong Yung v. Director of Immigration*, FACV Nos. 10 and 11 of 1999, Hong Kong Court of Final Appeal, 3 December 1999, [www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfj/1999/5.html?stem=&synonyms=&query=title\(lau%2520kong%2520yung\)&nocontext=1](http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfj/1999/5.html?stem=&synonyms=&query=title(lau%2520kong%2520yung)&nocontext=1).

4. See Michael C. Davis, *Making Hong Kong China: The Rollback of Human Rights and the Rule of Law* (New York: Columbia University Press, 2020); and Nathan Law, *Freedom: How We Lose It and How We Fight Back* (New York: Experiment, 2021).

5. The National People's Congress adopted the NSL on 30 June 2020. For the law's text, see [www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_\(a406\)_en.pdf](http://www.elegislation.gov.hk/fwddoc/hk/a406/eng_translation_(a406)_en.pdf).

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7. Christopher Walker, "Appetite for Obstruction: How Autocrats Subvert Democracy's Infrastructure," *Just Security*, 14 October 2021, www.justsecurity.org/78565/appetite-for-obstruction-how-autocrats-subvert-democracys-infrastructure.

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9. See Michael C. Davis, "National Security Trial Ruling a Setback for Human Rights in Hong Kong," *South China Morning Post* (Hong Kong), 4 August 2021. See also, Thomas E. Kellogg and Eric Yan-ho Lai, "The Tong Ying-Kit NSL Verdict: An International and Comparative Law Analysis," Georgetown Center for Asian Law Briefing Paper, October 2021, www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/10/TongYingKitVerdictGCAL.pdf.

10. *HKSAR v. Lai Chee Ying*, Final Appeal No. 1 of 2021, Hong Kong Court of Final Appeal, 9 February 2021, https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=133491; Davis, "National Security Trial." For an analysis of the court's decision and the difficult strategic position it faced, see Simon N. M. Young, "Hong Kong's Highest Court Reviews the National Security Law—Carefully," *Lawfare*, 4 March 2021, www.lawfareblog.com/hong-kongs-highest-court-reviews-national-security-law-carefully.

11. Full disclosure: *Journal of Democracy* coeditor Larry Diamond and longtime *Journal of Democracy* editorial-board member Andrew J. Nathan are members of the Hong Kong Democracy Council's advisory board.

12. See the HKSAR's 6 July 2020 press release on the regulations at www.info.gov.hk/gia/general/202007/06/P2020070600784.htm.

13. Condemning Jimmy Lai as a dangerous criminal, the article highlights the power to transfer the case. Su Di, "Observer: Approving Jimmy Lai's Bail Harmful to Hong Kong's Rule of Law," *People's Daily* (Beijing), 28 December 2020.

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