

Democracy and Rule of Law in China's Shadow

Edited by BRIAN CHRISTOPHER JONES

Oxford: Bloomsbury Publishing, 2021

264 pp. £70.00

ISBN 978-1-5099-3396-9 doi:10.1017/S0305741022001035

Democracy and rule of law are often mentioned in the same breath as if they are mutually reinforcing. The premise of this collection of a dozen papers by legal scholars is that they can sometimes come into conflict – as the editor Brian Jones comments, the “rule of law may stifle the democratic spirit, while democracy may overrun rule of law ideals” (p. 1). The context is the “shadow” of the book’s title, described by Amy Barrow as “China’s authoritarian governance practices [which] increasingly risk undermining the rule of law and democracy in other political contexts” (p. 239).

The collection begins with a comparative study by Fu Hualing and Michael Jackson of the constitutional context for protest in mainland China, Hong Kong and Taiwan. It includes a general introduction to the Hong Kong protests of 2014 to 2020 and the Taiwan “sunflower movement” of 2014. This provides background for many of the subsequent chapters, most of which focus on specific cases in Hong Kong and Taiwan, though with a focus on the two jurisdictions more than “China’s shadow.”

Jimmy Chia-Shin Hsu and Anne Cheung compare the courts’ treatment of civil disobedience in Hong Kong and Taiwan. They argue that it has been more accommodating in the latter, while Hong Kong’s Court of Final Appeal “has delivered a deceptively simplistic understanding of civil disobedience” (p. 44), and “stressed that civil disobedience must be peaceful and non-violent” (p. 46). Like Hsu and Cheung, Benny Tai is unhappy with this approach from the courts, though his chapter goes beyond civil disobedience to extol what he sees as benefits for a protest movement of a “radical wing advocating the use of violence” (p. 173) and to argue a case for “*uncivil* disobedience,” which features “covertness, evasiveness, violence and offensiveness” (p. 174).

Another comparative study, by Zhu Han, examines the way that courts in Hong Kong and Taiwan have dealt with cases arising from improper oath taking by legislators and public officials. Echoing Hsu and Cheung, Han argues that Taiwan’s courts have been more tolerant than those in Hong Kong, where the authorities have used “weaponisation of the law to suppress radical dissenting voices and political claims” (p. 81).

Brian Jones devises a three-stage test to determine when criticism of judges “violates the rule of law”; he argues it does if the criticism is targeted, contains elements of abuse or belligerence, and focuses on the validity or legitimacy of the decision maker. The cases he cites in relation to Hong Kong are small in number, and include one case of criticism of a non-Chinese judge for his sentencing of seven policemen. On the face of it, his three tests would also apply to the criticism since 2019 by politicians in the UK and US of foreign non-permanent judges for sitting on the Court of Final Appeal, which may have a deeper impact on the rule of law in Hong Kong.

Hsiaowei Kuan’s chapter on same-sex marriage in Taiwan reveals the complexity of the issues and potential tension between judicial outcomes and popular opinion, and in conclusion affirms the supremacy of the constitution over populist politics. In a later chapter, Lin Chien-Chih argues that Taiwan’s constitution is procedurally and substantively undemocratic, constrained by “the ideology of the self-deceiving one-China policy” (p. 179).

One exception to the focus on Hong Kong or Taiwan is Jack Tsen-Ta Lee and Jaelyn Neo’s discussion of legal interpretations of the right to be represented in

Singapore, an issue right at the intersection of democracy and the rule of law. In the only chapter dedicated to mainland China, Xiaobo Zhai shows that the Chinese concept of “rule of law” is thicker in design than often claimed and assesses challenges in implementing rule of law through a sensitive discussion of the relationship of the ruling party to the law.

At the end of his chapter, Zhai quotes a sentence from an unpublished paper by Gerald Postema, “Laws do not, indeed laws cannot, rule, only *people* rule,” and adds, “The rule of law is, in fact, a sophisticated mode of the rule of men and is ultimately a matter of interest, power and force” (p. 217). This is a key point, and understanding how power lies with individuals and institutions, not abstract concepts, could further clarify the relationship between rule of law and democracy.

One issue not covered is the time and money required to access the court system, at least in Hong Kong. Fu and Jackson comment that “protest [in Hong Kong] has become a middle-class activity” (p. 21), but can most of the middle class afford to hire a lawyer? Although class analysis may be out of fashion, maybe Hong Kong has more of an “elite rule of law” than a democratic one.

Finally, it is a little disappointing that a volume on the rule of law and democracy – both of which depend on respectful discussion of alternative views – gives most coverage to one side of the protest movements in Hong Kong and Taiwan which are the catalyst for the book. In Hong Kong at least, these events are open to more than one interpretation, and society has been politically polarized for years. Given how central assumptions about the social movements are to the arguments, the limited critical attention to this polarization is a little frustrating.

TIM SUMMERS
summers@cuhk.edu.hk

China's National Security: Endangering Hong Kong's Rule of Law?

Edited by CORA CHAN and FIONA DE LONDRAS

Oxford: Hart Publishing, 2020

368 pp. £42.99

ISBN 978-1-50995-589-3 doi:10.1017/S0305741022000911

Law book authors know the risk that their work may be outdated by the time of publication. That risk compounds when the topic is connected to ongoing political contestation. *China's National Security* belongs to a particular moment in the Hong Kong Special Administrative Region's troubled history, when the dust was finally settling after the 2014 Umbrella Movement. It was largely completed before the 2019 protests which threw the region into turmoil unseen for over half a century. By the time this paperback edition hit the streets, protesters were far less inclined to do the same, due to the mid-2020 promulgation of a national security law drafted for Hong Kong by the National People's Congress Standing Committee. This reviewer has written elsewhere that the national security law sits uncomfortably alongside Hong Kong's liberal-constitutional Basic Law, and if one accepts that proposition then the question posed in this book's subtitle may already be answered in the affirmative. What, then, does this collection have to offer?

The book comprises 17 chapters organized into three parts: the first exploring the relationship between China's national security and Hong Kong's rule of law; the