

BOOK REVIEWS

Hong Kong's Legislature under China's Sovereignty 1998–2013. By GU YU
[Leiden and Boston: Brill Nijhoff, 2015. xxi + 245 pp. Hardback €129.
ISBN 9789004277908.]

Hong Kong's reversion to Chinese rule in 1997, and more specifically the terms governing the 50-year transition period set out in the Sino-British Joint Declaration signed in Beijing in December 1984, necessitated the construction of an elaborate constitutional apparatus of checks and balances designed to enable two conflicting economic, political, and social systems to co-exist within a single national frontier: "one country, two systems." Whilst guaranteeing for at least half a century the retention of much of Hong Kong's existing constitutional system and, of course, its common law legal system, the accommodation of the pre-1997 arrangement of a separation of powers – not to mention, an emergent democracy – within a system of a blatantly different kidney was always going to involve some squaring of the circle. Whereas certain provisions of the Basic Law can be said to confer potentially far-reaching powers on the legislative arm of government, others clearly advantage the executive arm. Thus, on the one hand, the Legislative Council is entitled under certain circumstances to engage in a procedure that may lead ultimately to the passing of a motion of impeachment of the Chief Executive (Article 73(9)). In contrast, however, under Article 50, "if the Chief Executive . . . refuses to sign a Bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important Bill introduced by the Government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council". The terms of Article 48, in particular, make abundantly clear the Chief Executive's primacy in matters of initiation and implementation of legislation. From the outset, Hong Kong SAR's constitutional arrangements were dubbed "executive-led", and it has been clear that, for Beijing, from the outset, this was intended to be the key feature of the region's political landscape. The tensions are evident. Simply to touch on recent events, the 2014 "Umbrella Revolution" and Occupy Central protests, not to mention the relentless wrangling over the method of election of future Chief Executives, has drawn to international attention the desire of sections of the population to participate more fully in a democratic process – an outlook cautiously encouraged from the 1980s in Hong Kong's latter days as a British Overseas Territory. Ranged against this, there is the National People's Congress Standing Committee's opposing determination to uphold executive authority and, more particularly, to wield political control over candidates presented for the office of Chief Executive. Although it incorporated some minor concessions, the Government's proposed electoral reform, which was unveiled in April 2015 but which failed to win a two-thirds majority in the Legislative Council in mid-June, continued to look "executive-led".

Dr. Gu Yu's book, which derives from her doctoral dissertation, examines in detail the relationship between the legislature and the executive in the years immediately following reunification. Her study leans heavily on empirical research, and to a degree her findings are surprising. The author's broad conclusion is that, whilst the constitutional documents, read literally, might well lead to the conclusion that the Special Administrative Region's constitution is pronouncedly executive-led, at least in the early years, power was shared in practice by the legislative and executive branches to a substantial degree and matters often proceeded by consensus and

compromise. It always needs to be remembered, however, that every silver lining has a cloud. In more recent times, she observes that these “consensus-seeking and coalition building approaches . . . have given way to a desire for the concentration of power and full control over the political system on the part of the government” (p. 229) and, as Beijing turns the screw, in her estimation, “one country” is clearly beginning to predominate over “two systems”.

In her survey, the author sets out to show that, despite its attenuated role in policy making and the initiation of legislation, Hong Kong’s Legislative Council nevertheless has wielded significant influence in reacting to legislation introduced by the executive. Making the point that, from a functional angle, a legislature’s role is not confined to introducing and enacting legislation but extends to other activities, such as “representation, deliberation, information attainment and the exercise of checks”, it is argued that, at least in the early years under consideration, executive and legislature strove to proceed by consensus. Indeed, the author points out that the design of the former British Overseas Territory’s transitional political system was in fact “more likely to produce deadlock or impasse” than a decisively executive-driven structure. The Legislative Council has a number of measures at its disposal that enable it to exert influence, including powers to enact private bills, to amend Bills at committee stage or to repeal laws, the power to approve (and veto) budgets and financial proposals, and to scrutinise the legislative process. At the committee stage, concessions have most often been extracted from the Government. The Council can also exercise its power to summon persons to give evidence before it (Article 48(11)). A recent ruling in *Leung Kwok Hung v President of the Legislative Council of Hong Kong SAR* [2014] HKEC 1604 appears to have reinforced the Council’s autonomy. In dismissing an appeal by Leung (aka “Long Hair”) against the Legislative Council president’s peremptory curtailment of a filibuster in Council, the Court of Final Appeal declared that it was not prepared to review judicially the Council’s internal processes, acknowledging the Council’s “exclusive authority . . . in managing its own internal processes in the conduct of its . . . legislative processes” and declining to “intervene to rule on the regularity or irregularity of the internal processes of the legislature” (at [28]). Even if the Legislative Council has little or nothing to do with designing the legislative programme, financial proposals, or government business brought before it, it does have the control over the order in which it entertains business. By this means, too, it can exert an interstitial influence over the executive.

The author’s book brings to the fore the manner in which, confronted with a constitutional arrangement which is naturally weighted in favour of the executive, the Legislative Council in the past has succeeded in exploiting the rights conferred by the system as well as capitalising on various procedural devices in order to “squeeze concessions” from the Government. However, after auspicious beginnings, as the political complexion of the Legislative Council and the committee chairmen has mutated, as pro-Beijing and pro-business elements have begun to gain the upper hand, and as public support for the Council leaches away, the author suggests that “it is doubtful whether [the Legislative Council] will be able to play its intended role as a check on the executive branch power if the major pro-Beijing political groups therein remain determined to develop more collaborative relations with the executive” (p. 221). The fact is that the Central People’s Government and its organs are intervening more readily in Hong Kong’s affairs. As was made clear in the *White Paper on the Practice of the “One Country, Two Systems” Policy in the Hong Kong SAR* (10 June 2014), in this “new domain”, Hong Kong’s rights and autonomy always need to be viewed “in pioneering spirit” in the context of the bigger picture of “safeguarding China’s country’s sovereignty, security and

development interests". Government by consensus assisted by cross-party coalitions is coming to be replaced by a distinctly authoritarian, centralised approach that of course mirrors the mother country's outlook. This, in the author's view, may have further "enhanced" executive dominance, and even led to "the gradual disintegration of [the Legislative Council], deepened the growing fragmentation therein and weakened the potential of political groups within [the Legislative Council] to operate as a collective actor in proposing alternative policies" (pp. 225–26). For Hong Kong, the consequent loss in executive accountability is worrying.

In the final analysis, the title of Dr. Gu Yu's book says it all; and its content bears out Professor Albert Chen's pronouncement that constitutionally Hong Kong is "very far from being an independent city state". The system, from its beginnings, was skewed in favour of executive rule. Apart from occasional lapses – for instance, in one footnote, Fanny Law is variously referred to as "Ms.", "Mr.", and "Mrs.", all within the space of six lines (p. 227, n. 27) – the text is clear and well-structured, and the author supplies readers with a wealth of supporting detail and statistics, which amply support her thesis that, at least in the early years, despite an outwardly "executive-led" constitution, power-sharing between the executive and legislative branches of government was more widespread and effective than a reading of Hong Kong's raw constitutional documents would have led one to believe.

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International Law as the Law of Collectives: Toward a Law of People. By JOHN R. MORSS [Farnham: Ashgate, 2013. 168 pp. Hardback £65.00. ISBN 978-1409446477.]

Collective self-determination has long been regarded as something of a sticking point for international law. Is it a "right" or a "principle"? Should it be understood as a clearly articulated legal entitlement that is capable of being enforced or as a political slogan that benefits from conceptual imprecision and malleability? What precisely is meant by the "self" that is supposed to be "determined" in "self-determination"? Or of the "people" to which international lawyers refer when speaking of the "self-determination of peoples"? Perhaps most famously, if self-determination may be asserted only by a cohesive and readily identifiable "people", how can it also be the case that it is only through such assertion that a determinate "people" is deemed to come into being? Is there not a fatal circularity here, such that the concept of collective self-determination presupposes the existence of the very "people" its operationalisation is supposed to call forth?

In *International Law as the Law of Collectives*, John Morss confronts these and a host of other quandaries. Suggestive rather than programmatic, the book spirals around a broadly related set of anxieties rather than setting out its core claims directly and straightforwardly. Indeed, it does not lend itself to neat-and-tidy synopsis, shifting thematic and theoretical gears from chapter to chapter, in some cases abruptly and without appropriate transition. At root, though, Morss contends that international law has not grappled meaningfully with "collectives", a vague term that he never truly defines but that he nevertheless employs with a view to casting doubt upon both state-centric and individual-oriented accounts of international legal personality. According to Morss, international law has traditionally prioritised the state form, an artifice that he, like so many others, traces reluctantly to the 1648