

The Cultural Question and Political Control: The Influence of Legalism on Relations between the People's Republic of China and Hong Kong under the “One Country, Two Systems” Policy

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Abstract

This article examines how cultural duality contributes to political tensions between the Hong Kong Special Administrative Region and the People's Republic of China. The “One Country, Two Systems” policy, implemented after Hong Kong's handover to China in 1997, provided Hong Kong with a certain level of political autonomy that facilitates dialogue and can be beneficial for both, reinforcing prosperity and political sovereignty while aligning interests within China's national community. The objective of this article is to identify whether the control policies of the Chinese state are rooted in the cultural tradition of Legalism. It is interpreted that Beijing's governmental practices align with the principle of “One Country, Two Systems,” particularly when they challenge Chinese sovereignty. This article focuses on the areas of “Legal Foundations of Transnational Migration” and “Constitutionalism, Transnationality, and the Production of Law,” and is linked to the research groups “Humanism, Migration Law, and Migration Policies” and “State, Constitutionalism, and the Production of Law.”

Keywords

China, Legalism, Migration

1. Introduction

This article aims to identify how Hong Kong's political dissent movements in the second decade of the 21st century, influenced by liberal values inherited from the colonial period, have led part of the local population to view Hong

Kong as a “free territory”. The article argues that the Chinese state’s reaction to control is based on the cultural tradition of Legalism and argues that Beijing’s governmental actions are in line with the “One Country, Two Systems” principle insofar as these Hong Kong movements challenged Chinese sovereignty.

To contain movements of national unrest, the People’s Republic of China legitimately drafted the National Security Law in 2020; essentially, the law was designed to combat what was defined as subversion, secession, terrorism, and collusion with foreign forces that threatened the sovereignty of the Chinese state. The Chinese state’s social control movement is based on its millennia-old cultural tradition, historically characterized by political currents that centralize power in the hands of the government, such as Legalism, a traditional Chinese philosophical school.

This article aims to identify whether the Chinese government’s control policies are grounded in the tradition of Legalism. It is analyzed that Beijing’s governmental actions adhere to the principle of “One Country, Two Systems,” particularly in situations that challenge China’s sovereignty, such as the seditious movement in Hong Kong.

Regarding the methodological procedure, the study utilized bibliographic research, which was the main tool for investigating the proposed topic and achieving the research objectives. Thus, the steps of the bibliographic research initially consisted of surveying the literature on the topic and identifying the available material in both Portuguese and, primarily, English. Subsequently, the stages of the bibliographic research included locating the identified works, compiling or gathering the available material, and organizing key data and information for the research. Additionally, a study was conducted based on information from official websites of the People’s Republic of China governments, as well as research in documents of official speeches, reports from international organizations, dissertations, and theses. The article is constructed based on the logical foundation of the inductive method.

The article is divided into sections: first, it seeks to deconstruct a social imaginary that Hong Kong represents a “free territory”, and that this was constituted from the influence of values inherited from the British colonial period, and this ideal construction motivated seditious movements in Hong Kong after 2014; then the objective is to identify the influence of cultural Legalism adopted in legislation by China in harmony with the “One Country, Two Systems” principle as a legitimizer of sovereignty and, finally, the last section will present the final conclusions.

2. The Imaginary Construction of Free Territory in Hong Kong during the British Colonial Period as a Motivator for Seditious Movements

The territory of Hong Kong was a colony of the British Empire since the Opium

War (1839-42)¹. Hong Kong's reintegration into the Chinese state occurred in 1997, when it was agreed between British authorities and the People's Republic of China that Hong Kong would have the status of a Special Administrative Region, a legal situation that allowed a high degree of autonomy but was directly subordinated to the Beijing government, according to the so-called "Basic Law," a legal document that would function as a "mini-constitution" for the territory. This legal condition of Hong Kong is in line with the Chinese state's constitution, as Article 31 stipulates that "the state may establish Special Administrative Regions when necessary. The systems applied in these regions are stipulated by law approved by the National People's Congress of the People's Republic of China." The pre-established autonomy determinations by the Basic Law foresee a period of fifty years, until 2047, for the full legal incorporation of Hong Kong into the Chinese state (Li, 2011).

However, in the second decade of this century, there has been increasing political tension between some Hong Kong residents and Chinese authorities. The protesters advocate for increased political freedoms in the territory. In 2014, the movement known as the "Umbrella Movement"² erupted, demanding at that time the right to choose the local chief executive in the 2017 elections through direct voting, rather than an election from a list of candidates pre-approved by Beijing (Chan, 2014). The dissent movement in Hong Kong intensified in subsequent years, reaching its peak in 2019 when protesters took to the streets to oppose an extradition law for suspects to be tried in mainland China (Perassolo, 2019).

According to Mathews, there is a construction of a collective imaginary in Hong Kong that the territory is a kind of "free territory." The author notes that in recent years, Hong Kong locals have expressed greater acceptance towards displaced persons arriving in the territory to seek asylum, highlighting that in the years before the political protests against China, asylum seekers were generally ignored or despised by Hong Kong residents (Mathews, 2018).

It is worth reflecting on the belief that Hong Kong represents a "free territory", causes that go beyond the conjunctural interests characterized by movements of political contestation in relation to China, in the understanding of this work, the roots of the motivators of a perception of greater autonomy of the territory is a reflection of the historical period in which Hong Kong was constituted as a British colony from the mid-nineteenth century until the end of the twentieth century. It should be pointed out that this imaginary notion of a free liberal territory built up in the colonial period does not match the reality of Hong Kong, insofar as during the colonial period, the region was under the strong po-

¹The Opium War was motivated by the British Empire's interest in expanding its trade with China. However, the Chinese government prohibited the import of opium, a product traded by the British East India Company. This impasse led to hostilities and the conquest and transformation of Hong Kong into a British colony until 1997. Kissinger (2011).

²The name "Umbrella Movement" refers to an episode where police used tear gas to repress protesters, leading the dissidents to defend themselves with umbrellas, thus giving the movement its popular name.

litical control of the British authorities, where even Hong Kong locals did not vote to choose their rulers. The territory was administered by a governor appointed by the British government, and this appointment did not involve an electoral process in which the people of Hong Kong could vote. The colonial administration was highly centralized and power was concentrated in the hands of the governor, who exercised executive, legislative and judicial authority, with the support of appointed councils (Carroll, 2005).

For Tsang, British rule in Hong Kong was characterized by the centralization of power in the hands of British administrators in various aspects of colonial administration. The author points out that British governance in Hong Kong remained authoritarian and centralized, being dominated by expatriate British officials who, until the last two decades of rule, did not include many locals at the highest levels. These officials maintained an inhibited political center, operating without democratic counterweights. Furthermore, Tsang notes that the colonial administration often made decisions to benefit British interests, even when this ran counter to Hong Kong's interests (Tsang, 2007).

Thus, the idea of a free territory in Hong Kong during the British colonial period did not materialize as a historical reality. And with the reintegration into mainland China in 1997, there has been a trend towards greater cultural incorporation of Hong Kong natives into China. For Chu, there are complexities in trying to maintain the idea of "free territory" in Hong Kong, that is, the preservation of its distinct cultural identity amid growing integration with mainland China, in an environment increasingly influenced by China's economic and political forces. Since the handover in 1997, a "northbound imaginary" movement has emerged, where the influence of mainland China's cultural values on Hong Kong has intensified, focusing on exploiting economic opportunities in the mainland market. Especially through films, television programs and music, the idea of Hong Kong as a free territory has evolved into a search for economic opportunities, reflecting a shift in focus from cultural influence to adapting to economic realities (Chu, 2020).

Hong Kong is a territory with a significant immigrant presence, and its condition of greater economic freedom has historically attracted movements from various regions. The total migrant population represents about 40% of the population. However, in recent decades, this process has slowed. This slowdown may be explained by increased political control from China (Macrotrends, 2023).

The 21st century in Hong Kong has been characterized by the division of the social fabric of the Hong Kong Special Administrative Region. While the territory does not lose its international economic relevance due to its financial and commercial strength, its ambiguous role of belonging to the People's Republic of China, while also preserving its autonomy in political terms and cultural values, maintains local strength. However, unresolved and growing disparities in wealth and ideology have turned into divisions and cultural conflicts, with the richest

10% of the population earning about 44 times more than the poorest 10%. Citizens are not only divided by material wealth but also disagree on identity issues. Some identify as Chinese, while others embrace competing “localist” formulations. The social tensions that erupted in 2014 during the “Umbrella Movement” revolve around struggles over who speaks for Hong Kong and how to interpret Hong Kong as a community, culture, and collective imaginary (Polley, Poon, & Wee, 2018).

According to a study conducted by the University of Hong Kong aimed at identifying the sense of origin among Hong Kong residents, many locals perceived themselves more as “Asians” or “global citizens” than as “Chinese” or “citizens of the People’s Republic of China.” There is a universe characterized by disparities that produce ideologies transformed into divisions and cultural conflicts. The study classified separate identities on a scale of 0 to 100 points from 2008 to 2019, with higher scores indicating stronger positive sentiment: “effectively local” (84 points), “Asian” (71 points), “global citizen” (66 points), “members of the Chinese race” (60 points), “Chinese” (55 points), and “citizens of the PRC” (46 points) (University of Hong Kong, 2019).

The protest movements against the People’s Republic of China that erupted in 2014 reflect the anxiety of a region characterized by a multicultural mix, stemming from its history as a British colony, which produced the insertion of values that overflowed as a reaction to the fear that a centralized Chinese authority could somehow subtract ideals of greater political autonomy idealized by some locals in Hong Kong, which in itself did not exist during the period of British rule, given the colonial condition of the city in that historical period.

3. The Influence of Legalism in Harmony with the “One Country, Two Systems” Principle

The political nature of the Chinese State has its roots in the historical interaction between the state and society, forming a unique dynamic. China’s history is defined by a millennial tradition, highlighting a civilization that spans over 4000 years. Therefore, to understand China, it is essential to recognize the traditions of the intellectual currents that influence the country’s political behavior (Barbieri Junior, 2015).

According to Pye, China is a “civilization-state.” The greatness of Chinese civilization manifests in all aspects of its traditional culture, such that the strength of civilization is the structural factor maintaining China as a united entity over millennia. The role of the state is to ensure the preservation of tradition (Pye, 1993). Jacques argues that the Chinese have a different paradigm from the Western world in conceiving the state. In the constitutive relationship between state and society, legitimacy in the West is created by the ideal of democracy, whereas in the East, it is considered a guardian of Chinese civilization, a sort of patriarch of traditions (Jacques, 2009).

The cultural aspect of respecting tradition represents a fundamental amalgam

of the Chinese people. The millennial historical process of constituting the Imperial Chinese State³, its characteristics, and political behaviors show continuities that influence the actions of the People's Republic of China in contemporary times. According to Fairbank, over the 4000 years of China's political history, the Imperial State was dominated by Dynasties that had as their political conduct the pursuit of political unification as a strong ideal synonymous with stability, peace, and prosperity (Fairbank & Goldman, 2008).

However, the period of British control influenced Hong Kong's cultural identity. Western cultural ideals such as the free market, freedom of expression, freedom of the press, and English fluency appear among Hong Kong locals, thus creating a series of political challenges to political unity with mainland China, which is based on millennial cultural tradition. Therefore, due to historical factors from the British colonial period, some city residents uphold political principles that clash with China's traditional political centralization.

The existence of the millennial Chinese state represents an important potential in its political capacity to historically absorb ethnic and cultural differences. The country is a patchwork characterized by an extensive territory of 9.5 million square kilometers and a population of 1.328 billion. Its multiethnic society consists of 56 ethnic groups. The Constitution of the People's Republic of China stipulates that all ethnic groups are equal, legally establishing the protection of the legal rights and interests of ethnic minorities and promoting and developing equality, unity, and mutual assistance among all ethnic groups, as well as respecting regional autonomy (Barbieri Junior, 2015).

According to the text of the Constitution of the People's Republic of China, Chapter I (General Principles) in Article 4, it can be interpreted that all nationalities in the People's Republic of China are equal, with the state protecting their rights and promoting equality and unity. Discrimination and acts that harm national unity are prohibited. The state supports the economic and cultural development of regions inhabited by minorities, respecting their characteristics. In these areas, regional autonomy is exercised by self-government bodies. All nationalities are free to use their languages and preserve their customs (The National People's Congress of the People's Republic of China, 2004).

There are two fundamental intellectual cultural currents that shape the political behavior of the Chinese state in its relationship with society: Confucianism and Legalism. According to Santos, culture characterizes the social existence of a people or nation or groups within a society, the ways of conceiving and organiz-

³The history of Imperial China is characterized by the succession of dynastic periods: Xia Dynasty (21st to 17th century BCE), Shang Dynasty (17th to 11th century BCE), Zhou Dynasty (11th to 3rd century BCE), Qin Dynasty (2nd century BCE), Han Dynasty (2nd century BCE to 3rd century CE), Period of the Six Dynasties (3rd to 6th century CE), Sui Dynasty (6th to 7th century CE), Tang Dynasty (7th to 10th century CE), Song Dynasty (10th to 13th century CE), Yuan Dynasty (13th to 14th century CE), Ming Dynasty (14th to 17th century CE), and Qing Dynasty (17th to 20th century CE). In 1911, the Republic was proclaimed but had a brief duration due to power fragmentation. The People's Republic of China was established by the Revolution of 1949, since then political power has been monopolized by the Chinese Communist Party (CCP).

ing social life or its material aspects, the ideas, and beliefs that characterize a social organization. The effort to conceive cultures, to identify traits and characteristics that differentiate them, can lead to the error of imagining culture as a static and closed field. However, human cultures are dynamic, and changes and constructions are intertwined with the historical process (Santos, 2009).

Confucianism is a philosophical doctrine based on principles of respect for tradition and hierarchy. It plays a decisive role in forming Chinese society in terms of moral behavior, social hierarchy, discipline, and valuing work. Confucianism is fundamental to Chinese civilization and its role in ethical and political formation (Santos, 2015). Founded by Confucius⁴, it emphasizes values such as humanity (ren), justice (yi), and morality (de), promoting a harmonious society through respect and appropriate rituals (li). Confucian thought was shaped and reformulated over the centuries to meet the political and social needs of different eras. According to Gernet, in certain periods of Chinese history, Confucianism faced limitations in adapting to social changes and economic challenges. Nonetheless, this thought represents a central millennial tradition in China and continues to shape the cultural and political identity of contemporary China (Gernet, 1972).

Legalism represents a political current that aims to achieve a strong state as a condition for maintaining order to ensure domestic stability (Liu, 2006). According to Gernet, the Legalist school of thought is essential for understanding the foundation of state power through its political and social institutions. Led by figures like Han Fei⁵, Legalism argued that the state's effectiveness and order depended on the strict enforcement of laws and the centralization of power, discouraging any divergent interpretation or subjective judgment of the laws. Thus, Legalism profoundly influenced the administration and legal structure of China historically, promoting a highly regulated society where law replaced personal morality (Gernet, 1972).

Thus, in response to the protest movements in Hong Kong in the 21st century, one can interpret that the Chinese state adopted social control measures influenced by the philosophical current of Legalism. For the People's Republic of China, the idea of political segregation of Hong Kong is unacceptable. The Chinese government's stance emphasizes that Hong Kong is an inseparable part of China and that its secession is a product of the British imperialist period of the 19th and 20th centuries. Therefore, the reunification process is a Chinese right. The law criminalizes movements of secession, subversion, terrorism, and collu-

⁴Confucius, whose real name was Kong Qiu and is also known as Kongzi, was an influential Chinese philosopher born in 551 BCE in the State of Lu, present-day Shandong Province, China. He is one of the most important figures in China's cultural history, whose ideas have shaped Chinese civilization for over two millennia.

⁵Han Fei was an important Chinese philosopher who lived during the Warring States period (approximately 280-233BCE) in ancient China. He is considered one of the primary representatives of Legalism. Han Fei had considerable influence, especially during the formation of the Qin state, which eventually unified China under the authoritarian rule of Qin Shi Huang, the first Emperor of China.

sion with foreign forces (Hong Kong Special Administrative Region, 2020).

The 2020 China's National Security Law has notable conceptual connections with the Legalist philosophy of Han Fei, especially regarding how power and state control are exercised to maintain order and stability, based on the relationship of centralizing power. Just as Legalism aimed to promote stability through unquestionable compliance with the law, the National Security Law aims to reinforce China's stability and territorial integrity by complying with central government policies.

4. The 2020 National Security Law Based on the "One Country, Two Systems" Principle as the Legitimacy of China's Sovereignty

The "One Country, Two Systems" principle adopted by the People's Republic of China for Hong Kong was designed to allow Hong Kong's capitalist system to coexist with China's socialist system, ensuring autonomy in economic, cultural and political matters. After the transfer of sovereignty in 1997, this principle was intended to guarantee a period of stability and continuity for Hong Kong. Although it is a pragmatic and necessary solution to maintain Hong Kong's stability and prosperity, its implementation faces significant challenges due to the complex political dynamics between the region and the Chinese central government, as local movements have demanded greater autonomy for Hong Kong.

According to Leng, the origin of the "One Country, Two Systems" principle is rooted in Deng Xiaoping's⁶ reforms and thinking, serving as a strategic response to China's specific political, historical, and cultural conditions. The principle was proposed as a way to resolve issues of territorial integrity and sovereignty without imposing the mainland's socialist system on regions with established capitalist economic systems. This approach also aimed to create a peaceful and stable environment conducive to modernization and economic reforms throughout China, making the "One Country, Two Systems" principle not only a governance policy but also a strategy for national unity and development (Leng, 2007).

The National Security Law of 2020 aims to "prevent and punish the action of radical elements who organize vile activities and harm national security, as well as to protect the rights and freedoms of Hong Kong compatriots." According to Chinese ambassador Yang Wanming, the legislation is the responsibility of the central government, and since Hong Kong is a Special Administrative Region of China, the territory is subordinate to Beijing law, so the National Security Law is in line with Article 31 of the Constitution. In defense of the law, he points out that the legislation complies with the Basic Law and will not affect Hong Kong's social system and high degree of autonomy, reflecting the common will of 1.4 billion Chinese people, including Hong Kong compatriots (Yang, 2020). Furthermore, Yang argues that the "One Country, Two Systems" principle was ap-

⁶Deng Xiaoping was an influential Chinese leader who governed China from the mid-1970s to the late 1980s. He is widely recognized for implementing economic reforms that opened the Chinese economy to the global market, promoting significant economic growth.

plied to Hong Kong after its return to China in 1997. The expression “one country” refers to defending the central government’s prerogatives, as established by law, and protecting sovereignty, integrity, and national security. Meanwhile, “two systems” ensures a high level of autonomy for the Hong Kong Special Administrative Region, as granted by legislation. This model allowed Hong Kong to maintain its capitalist system while being part of socialist China, ensuring a high degree of local autonomy. This ideal represents a fundamental element of prosperity and stability as Hong Kong faced financial crises but remained among the world’s freest and most competitive economies, with a per capita GDP higher than many developed countries (Yang, 2021).

Oliveira argues that the 2020 National Security Law, despite being justified within the Chinese legal framework, raised significant concerns about the future of civil liberties in Hong Kong and the viability of the “One Country, Two Systems” model (Oliveira, 2021). It should be noted that for the Chinese state, the law emerged in response to successive waves of protests that Beijing claimed threatened not only Hong Kong’s stability and security but also that of the entire country. The political protests in Hong Kong violate the principles of the “One Country, Two Systems” ideal, endangering the country’s unity.

It is understood in this article that, although cultural challenges may represent obstacles to Hong Kong’s integration, Beijing’s measures of greater control over Hong Kong in the context of the 2020 National Security Law are inserted in a larger context to guarantee the sovereignty of the territory of Hong Kong for the State of China, and are based on the principle of “One Country, Two Systems”, that is, the central importance of the political unity and sovereignty of the People’s Republic of China. Thus, this principle emerges as a crucial strategy for China to garner support from Hong Kong locals, allowing the city to maintain its own distinct political and economic system, differing from the predominant socialist system on the Chinese mainland. This political autonomy granted to Hong Kong offers significant advantages, especially in the realm of international relations and global trade. Additionally, Hong Kong enjoys greater freedom of expression and press compared to the rest of China, strengthening its position as an attractive hub for cultural exchanges.

The “One Country, Two Systems” principle not only reinforces China’s sovereignty and political cohesion but also promotes stability and prosperity throughout the 21st century. By maintaining central authority under “one country,” sovereignty, integrity, and national security are assured, while “two systems” allows Hong Kong to maintain a considerable level of autonomy as established by law. This approach is fundamental to the harmony and future development of both Hong Kong and China as a whole.

5. Conclusion

This paper aimed to identify how Beijing’s governmental control practices over Hong Kong, exemplified by the 2020 National Security Law, are influenced by

the cultural tradition of Legalism and how these practices are in line with the policy principle of “One Country, Two Systems”. Legalism has significantly influenced China’s administration and legal structure, and the 2020 National Security Law in Hong Kong reflects this philosophy by centralizing power and using state control to maintain order and stability while promoting compliance with central government policies.

The construction of a vision of “free territory” in Hong Kong, based on British domination, only represents a social imaginary that is not in line with the historical condition of colony that marked the territory of Hong Kong in the 19th and 20th centuries. China’s interest in Hong Kong is deeply rooted in the principle of the “One Country, Two Systems” policy, which aims to guarantee national unity while allowing different economic and administrative systems to coexist. The “One Country, Two Systems” principle was designed to maintain China’s territorial integrity, so the National Security policy adopted by China in recent years reflects China’s interest in preserving its national integrity and sovereignty, while recognizing and respecting Hong Kong’s particularity, aiming for a balance between central control and local autonomy.

It is concluded that since the transfer of Hong Kong from the British to the Chinese in 1997, and the implementation of the “One Country, Two Systems” policy, Hong Kong has obtained a form of relative political autonomy that contributes to mutual prosperity, this configuration also reinforces the notion of political sovereignty, aligning interests and strengthening ties within China’s national community. It is understood that the contrast between the Hong Kong Special Administrative Region and the People’s Republic of China presents itself as a historical process of state-building in China in the 21st century, based on the convergence of regions with the predominant influence of mainland China. The principle of “One Country, Two Systems” allows Hong Kong to have its own cultural characteristics as an integral part of the People’s Republic of China.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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