WHY TAIWAN IS NOT HONG KONG: A REVIEW OF THE PRC’S “ONE COUNTRY TWO SYSTEMS” MODEL FOR REUNIFICATION WITH TAIWAN

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Abstract: This article critically examines the “One Country Two Systems” model (OCTS) developed by the People’s Republic of China (PRC) for achieving the reunification of Taiwan. The model is in many respects the same as that already applied in Hong Kong. The PRC promises that under OCTS, the Taiwanese will enjoy a “high degree of autonomy”, be “masters in their own house” and maintain their way of life. However, in contrast to the people of Hong Kong, who have never enjoyed full democracy, the Taiwanese have achieved a much greater degree of autonomy and accountability than is possible under OCTS. The OCTS model cannot therefore deliver what it promises. The Article demonstrates this by comparing OCTS as elaborated in the Basic Law of Hong Kong with the current constitutional and political arrangements in Taiwan.

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I. INTRODUCTION

With the transfer of full sovereignty over Hong Kong¹ and Macau² to the People’s Republic of China (“PRC”) assured, Beijing faces one remaining obstacle to its goal of national reunification, what it calls the “Taiwan question.”³ Beijing’s policy for achieving peaceful reunification of mainland China and Taiwan is essentially the same as that applied in Hong Kong and Macau, and is known as “one country two systems” (“OCTS”).⁴ Under OCTS, Taiwan would, like Hong Kong and Macau, become a “special administrative region” under the authority of the PRC central government. However, it would be permitted to enjoy a “high...
degree of autonomy" in executive, legislative, and judicial matters, and its capitalist way of life would be preserved for an indefinite period.\(^5\)

The PRC government has not elaborated on the OCTS model insofar as it is intended to operate in Taiwan. However, it has done so in relation to Hong Kong, by enacting the Basic Law of the Hong Kong Special Administrative Region ("Basic Law"). While the PRC government has indicated some important differences between the application of OCTS to Taiwan and Hong Kong, it has repeatedly stated that the fundamental concepts will be the same in both cases.\(^6\) An examination of the PRC’s implementation of OCTS in Hong Kong therefore provides an important indication of its intentions for Taiwan. This article analyses key provisions of the Hong Kong Basic Law to assess the impact of OCTS on Taiwan.

The government in Taiwan, which describes itself as the government of the Republic of China ("ROC"),\(^7\) rejects OCTS.\(^8\) OCTS is based on the premise that Taiwan is part of the PRC, but the ROC government claims that it is a sovereign state. While there is a strong argument that Taiwan should be regarded as a state in international law,\(^9\) most countries do not regard Taiwan, or the ROC, as a state,\(^10\) and it is not a member of the United Nations.\(^11\) This is arguably, in some cases at least, because the PRC

\(^{5}\) See infra notes 28-35 and accompanying text. The period of 50 years is stipulated, in relation to Hong Kong, in the Joint Declaration on Hong Kong, supra, note 1, art. 3(12). No time limit has been fixed in relation to Taiwan as of yet.

\(^{6}\) See infra discussion Part II.

\(^{7}\) Or, more informally, the government of the Republic of China on Taiwan. In this article, "Taiwan" will be used to refer to the area under the effective jurisdiction of the government in Taipei (the ROC government), i.e. Taiwan, the Pescadores Islands (or Penghu), and the islands of Matsu and Kinmen. As used in this article, "Taiwanese people" refers to all citizens of the ROC. Although the term is sometimes used to refer only to the dominant ethnic group—the Minnan Chinese who commenced emigrating to Taiwan many centuries ago, in this article the author also includes the "mainlanders" who fled with the Kuomintang ("KMT") in 1949, the Hakka minority, and the indigenous people of the island (yuanzhumin).

\(^{8}\) See infra notes 43-50 and accompanying text.

\(^{9}\) See infra note 51.

\(^{10}\) It is not officially recognised as a state by most nations, although it is treated as a de facto state by many of those nations. Cheri Attix, Between the Devil and the Deep Blue Sea: Are Taiwan’s Trading Partners Implied Recognition of Taiwanese Statehood?, 25 CAL. W. INT’L L.J. 357, 379-387 (1995); Andrew Godwin, Legal Aspects of Australia’s Commercial Relationship with Taiwan, 4 BOND L.R. 41 (1992). See also Taiwan Relations Act (1979), 22 U.S.C. § 3301 (1979).

opposes any nation recognising the ROC. The ROC’s rejection of the OCTS based on statehood arguments thus encounters problems arising from international realpolitik.

This article presents objections to the OCTS model that do not rest on particular views of Taiwan’s statehood. The argument here is that the imposition of OCTS on Taiwan would radically reduce the degree of autonomy and accountability which currently exists in the Taiwanese political system. While it might once have been compatible, to some extent, with the nature of government in Taiwan, it is no longer so.

Part II of the article examines the history of the OCTS model. Although it is being implemented first in Hong Kong, it was originally conceived as a method of achieving reunification with Taiwan and its application to Hong Kong is viewed by the PRC as a “test-run” for Taiwan. Part III compares the constitutional system in Hong Kong under British rule with the constitutional system currently in place in Taiwan, which OCTS is intended to displace. While there were many similarities between Hong Kong and Taiwan in the early 1980’s when OCTS was first being developed, by 1996 the political systems of the two entities had radically diverged. The experience gained from instituting OCTS in Hong Kong has become increasingly irrelevant to Taiwan. Part IV considers Hong Kong’s Basic Law to determine the impact such a law would have on Taiwan. The discussion focuses on the Basic Law provisions concerning the relationship between the governmental organs in Hong Kong and the PRC central government, and on the autonomy and accountability of those organs.

In this discussion, autonomy refers to the extent to which the people in Taiwan or Hong Kong are free to regulate their own governmental affairs without external constraint or interference. This includes their capacity to determine their own constitutional framework, enact and interpret laws, and implement policies. Accountability refers to extent to which officials in the governmental organs in Hong Kong and Taiwan are chosen by and responsible to the people in those regions. Both autonomy and

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12 See infra note 51.
14 The term “accountability” is used in a wide range of contexts. The focus here is on the accountability of governmental organs to the people of a political community, either through the electoral
accountability are intended to be understood in a comparative rather than a prescriptive sense. This article does not deal with the extent to which Taiwan (or Hong Kong) should enjoy autonomy and accountability or what these concepts should mean for them by reference to international standards; the argument is simply that the implementation of OCTS (as it is presently conceived by the PRC) in Taiwan would, in contrast to the position in Hong Kong, severely diminish both autonomy and accountability.

II. THE "ONE COUNTRY TWO SYSTEMS" MODEL

Although the PRC government is implementing the OCTS model in Hong Kong and Macau, it originally developed the model in order to achieve reunification with Taiwan. Following the death of Mao Zedong and the advent of the "Dengist" era in the late 1970’s, the Chinese Communist Party ("CCP") made a significant shift in its policy towards the island. In 1978, at the Third Plenary Session of the Eleventh Party Central Committee, PRC officials departed from earlier rhetoric calling for the "liberation" of Taiwan by force and began to emphasise "peaceful reunification." In 1979, the Standing Committee of the National People’s
Congress ("NPC") issued a *Message to Compatriots in Taiwan* urging national reunification and stating that the PRC would "respect the status quo on Taiwan and the views of people of all walks of life there and adopt reasonable policies and measures." This was followed in 1981 by a *Nine-Point Proposal*, issued by Ye Jianying, Chairman of the Standing Committee; the core concepts of the OCTS model appeared at points three and four of the *Proposal*:

3. After the country is reunified, Taiwan can enjoy a high degree of autonomy as a special administrative region and it can retain its armed forces. The Central Government will not interfere with local affairs on Taiwan.

4. Taiwan's current socio-economic system will remain unchanged, so will its way of life and its economic and cultural relations with foreign countries. (emphasis added)

In 1982, Deng Xiaoping, then China's paramount leader, endorsed the *Nine-Point Proposal* and described it as "embod[y]ing the 'one country two systems' principle." In the following year, he explained that, as a strong and prosperous if it is unified; claims that reunification will bring economic benefits to the Taiwanese; threats to use force (inter alia if Taiwan declares independence or refuses to negotiate on reunification); and the blocking of Taiwan's attempts at diplomatic recognition and participation in international institutions. CCP threats to use force to resolve the "Taiwan issue" are backed up by war games conducted in the Straits of Taiwan during Taiwanese elections, including the 1996 presidential elections. James Pringle, *Peking Ends Military Manoeuvres Off Taiwan*, TIMES, Mar. 26, 1996, available in 1996 WL 6483920.

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20 Standing Committee of the National People's Congress, *Gao Taiwan Tongbao Shu [Kao T'aiwan T'ungpao Shu]*[Message to Compatriots in Taiwan], RENMIN RIBAO, Jan. 1, 1979, at 1.
22 Id. at 10. Article 31 of the 1982 CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA [hereinafter XIANFA [P.R.C.]] was adopted by the National People's Congress in order to permit the creation of SARs. *Wu*, supra, note 17, at 22. Article 31 provides:

"The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of specific conditions."

23 Li, supra note 19, at 22. Deng Xiaoping had stated that OCTS is one of the "Chinese characteristics" in the oft-used phrase "building socialism with Chinese characteristics." *Current Policies and Prospects for Hong Kong*, BEIJING REV., Jan. 4-10, 1988, at 18. For an explanation of OCTS in terms of Marxist ideology, see Wen Qing, "One Country Two Systems: The Best Way to Peaceful Reunification,"
special administrative region, Taiwan would “exercise independent jurisdiction and the right of final judgement.”

Taiwan would be permitted to keep its military, and the mainland would station neither troops nor administrative personnel there. It would “administer its own political parties, government and armed forces.” However, Deng also stressed that “complete autonomy” was unacceptable, that the Taiwanese administration would have the status of a local government and that only the PRC (as opposed to the ROC) could represent China internationally.

The current official PRC position on OCTS as it applies to Taiwan appears in the *State Council’s 1993 White Paper on “the Taiwan Question and the Reunification of China”* (“White Paper”). Part III of the *White Paper* reiterates the PRC’s basic position of “peaceful unification; one country two systems.” The *White Paper* sets out four key principles, which may be summarised as follows:

(1) There is only one China, of which Taiwan is a part. The central government of China is in Beijing and the “authorities in Taipei” are therefore not a legitimate government of China. The PRC opposes the following models: the “Two China’s” model (the mainland as one China and Taiwan as a separate China); the “One Country Two Governments” model (one China but one government in Beijing and a separate government in Taipei); and the “One China, One Taiwan” model (the existence of an independent Taiwan—that is,

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24 Deng Xiaoping tan Zhongguo Dalu he Taiwan Heping Tongyi Shexiang [T’eng Hsiaop’ing t’an Chungkuo Talu ho T’aiwan Hoping T’ungi Shehsiang] [Deng Xiaoping Discusses the Plan for the Peaceful Reunification of Taiwan and the Chinese Mainland], RENMIN RIBAO, Jul. 30, 1983, at 1.

25 Id.

26 Id.

27 Id.

28 Id.

29 *TAIWAN QUESTION*, supra note 3; Cooper, *supra* note 3, (a highly critical analysis of the *White Paper*).

30 "Authorities" [*dangju*] [*tangchü*] is the term commonly used by the PRC government to refer to the government in Taipei.
Taiwan as a separate country). The *White Paper* states that "‘Self-determination’ for Taiwan is out of the question."\(^{31}\)

(2) Although there is only one China, it is possible for socialist and capitalist societies to co-exist within it, so that, after reunification, Taiwan’s "current socio-economic system, its way of life as well as economic and cultural ties with foreign countries can remain unchanged."\(^{32}\)

(3) After reunification, Taiwan will enjoy a high degree of autonomy as a special administrative region ("SAR"). It will have its own administrative and legislative powers, an independent judiciary and right of adjudication and "will run its own party, political, military, economic and financial affairs." It will, to some extent, be able to conclude agreements with foreign countries (but not, of course, as a sovereign nation). Government representatives in the Taiwan SAR will be eligible for appointment to senior posts in the central government.\(^{33}\)

(4) Economic and other links between mainland China should be rapidly expanded and negotiations towards reunification commenced as soon as possible.\(^{34}\)

Part III of the *White Paper* also states that the "Taiwan issue" is a domestic affair, involving no foreign government—that it is not analogous to the Korean and German "divided country" situations, and that the PRC reserves the right to use military force to uphold its sovereignty and territorial integrity over Taiwan.\(^{35}\)

The principles in the *White Paper* have been reaffirmed by Jiang Zemin, the PRC’s current President, who has also emphasised that, within

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\(^{31}\) TAIWAN QUESTION, *supra* note 3, at 88.
\(^{32}\) *Id.*
\(^{33}\) *Id.*
\(^{34}\) *Id.* at 88-92.
\(^{35}\) *Id.* at 86.
the OCTS framework, the Taiwanese will be “masters of their own home” [dang jia zuo zhu].

The White Paper, however, does not provide clear details of how OCTS will work in practice in Taiwan. The PRC has elaborated on the OCTS model with Hong Kong, not Taiwan, as the reference point. This change occurred because negotiations between the PRC and the United Kingdom on the future of Hong Kong led the PRC to adopt OCTS as the basis for regulating the relations between Hong Kong and the PRC central government following its resumption of sovereignty. The concrete form of OCTS as it applies to Hong Kong is now reflected in the Basic Law of the Hong Kong SAR, adopted by the National People’s Congress on April 4, 1990.

There are important differences between the OCTS model outlined in the White Paper on Taiwan and the principles behind the Hong Kong Basic Law. According to the White Paper, the Taiwanese are to be granted greater autonomy than the people of Hong Kong, in that they would retain their military, party and political systems after reunification. Nevertheless, the central features of the White Paper’s OCTS model for Taiwan are the same as those of the Basic Law: the creation of an “SAR” subordinate to the central government; the preservation of the current socio-economic system and way of life; the enjoyment of a “high degree of autonomy” in the exercise of legislative, executive and judicial powers.

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36 Jiang Zemin zai Xinchun Chahuahuishang Fabiao Zhongda Jianghua, [Chiang Tsemin tsai Hsinch’un Ch’ahuahuishang Fapiao Chungta Chianghua][Jiang Zemin makes an important speech at a Chinese New Year Tea Reception][hereinafter Jiang ZeminJianghua] RENMIN RIBAO, Jan. 31, 1995, at 1; see also Premier Reaffirms Policy Toward Taiwan, BEIJING REV., Feb. 19-25, 1996, at 15. Jiang Zemin has produced an Eight-Point Proposal. While reasserting that “[t]he lifestyle of our Taiwanese compatriots and their will to be the masters of their home must be freely respected,” the Proposal emphasises PRC sovereignty over Taiwan: “China’s sovereignty and territory are never to be divided. Any attempts, in words or deeds to create an ‘independent Taiwan’ or to ‘split the country and rule under separate regimes’ or to create ‘two Chinas over a certain period of time’ must be resolutely opposed.” Id.

37 WU, supra note 17, at 23; LEE, supra note 17, at 11; LONG, supra note 17, at 162-65; WANG, supra note 16, at 44-50.


39 TAIWAN QUESTION, supra note 3, at 84; see generally WU, supra note 17, at 31; LEE, supra note 17, at 13; LONG, supra note 17, at 163.
(including an independent judiciary); and a significant degree of control over local governmental and economic affairs.

The PRC clearly links the resolution of Hong Kong and Taiwan issues together. Its officials have emphasised that the basic principles of the model are applicable to both, and have stated that the creation of the Hong Kong SAR will enable it to prove to Taiwan that OCTS is feasible and can operate successfully in Taiwan.40 Several other commentators also view the Hong Kong experience of OCTS as having great significance for Taiwan.41

In sum, although a “Basic Law of Taiwan” (should one be passed by the PRC’s National People’s Congress)42 would be likely to differ

40 In a speech to members of the Hong Kong Special Administrative Region’s Basic Law Drafting Committee, Deng Xiaoping stated that “[t]his Basic Law [of Hong Kong] should set an example for Macau and Taiwan, so it is very important.” Current Policies and Prospects for Hong Kong, BEIJING REV., Jan. 4-10, 1988, at 14; see also Zai Zhongyang Guwen Weiyuanhen Diqian Quanli Huixiang De Jianghu [Ts’ai Chungyang Kuowen Weiyuanhen Tisants’u Chuant’i Huisheng de Chianghua] [Speech of Deng Xiaoping at the Third Conference of the Central Advisory Committee of the Chinese Communist Party], RENMIN RIBAO, Jan. 1, 1985, 1. Deng Xiaoping said: “The resolution of the Hong Kong question will directly influence the Taiwan question. Using the method of one country two systems should be something they can accept.” See generally C. L. Chiu, Dilemmas in China’s Reunification Policy Toward Taiwan, 26 ASIAN SURVEY 467, 470-474 (1986); Wu, supra note 17, at 23; Lee, supra note 17, at 11; Wang, supra note 16; Long, supra note 17, at 162. Long writes that “Hong Kong was both a dry run for the reintegration of Taiwan, and China’s best chance of demonstrating to the sceptical Taiwan public that it was feasible.” On Jan. 3, 1997, the official China News Agency’s domestic service stated that the success of OCTS in Hong Kong “will increase people’s confidence and accumulate experiences that China can follow upon re-establishing sovereignty over Macau in 1999 and settling the Taiwan issue.” Xinhua Looks Forward to Hong Kong’s Future in 1997, BBC SUMMARY OF WORLD BROADCASTS, Jan. 3, 1997, available in LEXIS, Asiapc Library, ALLNWS File.

41 See, e.g., Agnes Bundy, The Reunification of China with Hong Kong and its Implications for Taiwan: An Analysis of the “One Country, Two Systems” Model, 19 CAL. W. INT’L L.J. 271, 282-284 (1989); Joseph Cheng, The Constitutional Relationship between the Central Government and the Future Hong Kong Special Administrative Region Government, 20 CASE W. RES. J. INT’L L. 65, 97 (1988). Compare Hungdah Chiu, Legal Problems with the Hong Kong Model for Unification of China and their Implications for Taiwan, 2 J. CHINESE L. 83 (1988). Chiu suggests that “political, economic, social and strategic issues” mean that the PRC needs to adopt an approach to Taiwan which is different from that taken in Hong Kong. Id. at 93.

42 During the cross-strait tension in the build-up to the Taiwanese presidential elections in March 1996, the PRC’s Xinhua News Agency reported that Lin Liyun, a “Taiwan deputy” to the NPC and member of the NPC Standing Committee, proposed enacting a law called “Basic Law of the Taiwan Special Administrative Region.” Basic Law on Taiwan Proposed, XINHUA NEWS AGENCY, Mar. 14, 1996, available in LEXIS, Asiapc Library, XINHUA File. Another deputy, Wang Ansheng also proposed that the NPC enact a law governing mainland-Taiwan relations which would contain the key OCTS concepts. He said that the law should state that Taiwan is part of China and that its autonomy would be protected. NPC Deputies Propose Legislation on Taiwan Issue, XINHUA NEWS AGENCY, Mar. 8, 1996, available in LEXIS, Asiapc Library, XINHUA File. In October 1996, the South China Morning Post reported that Li Jiaquan, a researcher at the Taiwan Institute of the Chinese Academy of Social Sciences believed to be a consultant to President Jiang Zemin, had indicated that a Basic Law for Taiwan was being planned. Munn Tam, Beijing planning a Basic Law for Taiwan, S. CHINA MORNING POST, Oct. 19, 1996, at 10, available in LEXIS, Asiapc Library, ALLNWS File.
significantly from the Hong Kong Basic Law in many respects, the two Laws must, on a fundamental level, share common features if the OCTS model is to be adhered to. An analysis of the Hong Kong Basic Law therefore sheds light on how the government in Beijing intends to regulate Taiwan, should it ever get the chance. This analysis will be undertaken in Part IV.

A. The Taiwanese Government’s Response to the OCTS Model.

The government of the ROC has consistently rejected the OCTS model. The logic behind its present approach is outlined in its response to the White Paper, published by the ROC Mainland Affairs Council in 1994. The Council claims that the basic premise of the model (that the PRC is the only legitimate government of China) is false. The Council claims that China is in fact “at present temporarily divided into two areas under two essentially equal political entities [benzhishang wanquan duideng de zhengzhi shiti], the government of the ROC and the Peking regime,” each having exclusive rights in the territory under its control.

The Council goes on to argue that the OCTS model would bring about the loss of the way of life and basic human rights the Taiwanese presently enjoy and eventually force Taiwan to abandon its liberal democratic system of government in favour of the CCP’s form of socialism. The OCTS model is “the biggest obstacle to reunification” and is “objectively unfeasible and subjectively absolutely unacceptable.”

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43 Kao, supra note 19, at 57-61; Wu, supra note 17, at 85-86; Lee, supra note 17, at 40-41; Long, supra note 17, at 232-34. For a discussion of the evolving ROC policy towards the mainland, see Lawrence Weiner, The Impact of Taiwan’s Political Reform on Its Mainland China Policy: Pragmatic Economic Relations and Conflicting Political Ideology, PAC. Rim L. & Pol’y J. 27 (1992) (Intramural Issue).


45 Id. at 112.

46 Id.

47 Id.

48 Dui Zhonggong “Taiwan Went’i yu Zhongguo de Tongyi” Baipishu de Kanfa [Tui Chungkung “T’aiwan went’i yu Chungkuo te T’ungi” Paip’ishu te K’ana] [Views on Communist China’s White Paper on “The Taiwan Question and the Reunification of China”], in MAINLAND AFFAIRS COUNCIL, EXECUTIVE YUAN, supra, note 44, at 80. This part of the document is not translated in Cooper; the translation provided here is the author’s own.

49 Id. As an alternative to the OCTS model, the KMT government has devised Guojia Tongyi Gangling [Guidelines for National Reunification], passed by the National Unification Council, Feb. 23, 1991, and by the Executive Yuan at its 2223rd meeting, Mar. 14, 1991. GUIDELINES FOR NATIONAL
Since the OCTS is totally rejected by other political parties, including the main opposition Democratic Progressive Party ("DPP") and the newly established Taiwan Independence Party, which support complete independence from China, OCTS could not be implemented in Taiwan unless it was imposed without the consent of the Taiwanese people (the same way it has been imposed in Hong Kong).

The remainder of this article argues that the OCTS model is not now a feasible means of achieving reunification. This is because, quite apart from the fact that OCTS is inconsistent with the ROC's claims to be a "political entity" or a de facto or de jure state, OCTS would undermine the

REUNIFICATION, English translation reprinted in COOPER, supra note 3, at 125-27. The goal of these Guidelines is to establish a "democratic, free and equitably prosperous China" in contrast to what the KMT views as a socialist authoritarian state. Id. at 125. The Guidelines envisage a gradual process of reunification, consisting of three stages: in the short term, a phase of exchanges and reciprocity; in the medium term, a phase of trust and co-operation, including the establishment of official communication channels, and direct postal, transport and communication links; and, in the long term, the establishment of a consultation organisation for unification, which would develop a new constitutional system based on the will of the people in both the mainland and Taiwan. Id. at 126-27. It is clear that these Guidelines cannot be implemented unless the form of government in the mainland becomes a liberal democracy, a condition which is in fundamental conflict with the PRC Constitution and therefore unacceptable to the CCP.

50 *Wu, supra* note 17, at 233-46. Although the DPP's presidential candidate in the 1996 elections was a strong supporter of independence, other sections of the DPP, while continuing to advocate eventual independence from China, have become more cautious over the issue. Partly, as a consequence of this, the Taiwan Independence Party split from the DPP following the elections. *Li Zhenyuan (Chairman of the Taiwan Independence Party), Guanxin Zande Tudi yu Renmin [Kuanhsin Tsante T'uti yu Jenmin] [Show Concern for Our Own Land and People], JIANGUODANO TONGXUN [CHIENKUOTANG T'UNGHSON] [BULLETIN OF THE TAIWAN INDEPENDENCE PARTY], Dec. 10, 1996, at 1.*

51 These claims are not supported by most members of the international community; see *supra* notes 10-11 and accompanying text. However, Taiwan arguably satisfies the criteria for statehood set out in article 1 of the Convention on Rights and Duties of States (Montevideo Convention), Dec. 26, 1933, 165 L.T.N.S. 19. It has a defined territory, a permanent population, an effective government and the capacity to enter into relations with other states. *See, e.g., Jiang Huangchi, Lun Taiwan zhi Guojia Shuxing [Lun T'aiwan Chih Kuochia Shuhsing][A Discussion of Taiwanese Statehood], 26 GUOLI TAIWAN DAXUE FAHSOEH LUNCONG [KUOLI T'AIWAN TAHSUEH FAHSAEH LUNTS'UNG][TAIWAN NATIONAL UNIVERSITY LAW JOURNAL] 109, 154-71(1996); Attix, supra note 10, at 366-68.* Crawford maintains that "Taiwan is not a State because it does not claim to be, and is not recognized as such: its status is that of a consolidated local de facto government in a civil war situation." JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 151 (1979). Crawford's objections are no longer as persuasive as they once were. In relation to the argument that Taiwan does not claim to be a state, Jiang points out that recent constitutional reforms, including the confining of the electorate to Taiwan (see *infra* notes 128-131 and accompanying text), and the Taiwanese government's assertion that both it and the PRC are political entities amount to a "quasi declaration of independence." *Jiang Huangchi, supra,* at 112-48; see also Jau-Yuan Hwang, Constitutional Change and Political Transition in Taiwan since 1986—The Role of Legal Institutions, 259-72, 286-87 (1995) (unpublished S.J.D. dissertation, Harvard University) (on file with Harvard University Library and author) (arguing that Taiwan has now adopted a "divided states" approach to its status, similar to the Koreas or the pre-unification Germanies). Jiang contends that the Taiwanese government does not openly declare itself a state because of the PRC's unlawful threat of force; hence, the failure to make such a declaration does not constitute a denial of statehood. *Jiang Huangchi, supra,* at 131-35. In relation to the
degree of governmental autonomy and accountability the Taiwanese have come to enjoy and would therefore drastically affect their way of life. The model therefore cannot deliver what it promises; it fails on its own terms. The main argument is developed in Part IV. Before proceeding to that, the constitutional history of Hong Kong under British rule and Taiwan under Nationalist (Kuomintang or KMT) rule is reviewed. This analysis indicates why the PRC could, in the early 1980's, have reasonably believed that OCTS was workable in both regions. However, it also shows how events in Taiwan over the last decade have undermined the premises upon which the model was based.

III. AUTONOMY AND ACCOUNTABILITY IN HONG KONG AND TAIWAN PRIOR TO OCTS

When the OCTS model was first formulated in the early 1980's, the people of Hong Kong and the people of Taiwan were both subject to legal regimes imposed externally and had little say in determining who governed them. Had OCTS been imposed at that time, it could have led, on paper at least, to greater autonomy and accountability. The governmental systems of both regions were reformed during the 1980's and early 1990's; in Hong Kong, the change has been significant, but not fundamental. In Taiwan, on failure of other countries to recognise Taiwan as an independent state, Crawford himself states that the more accepted position at international law is that recognition is, generally speaking, not constitutive but declaratory, having political not legal effect. Crawford, supra, at 15-25; Attix notes that the non-recognition of Taiwan/ROC by most nations is a result of pressure by the PRC: “There is no indication that these states are withholding recognition because they find Taiwan’s existence repugnant or its actions in violation of any jus cogens principle of international law.” Attix, supra note 10, at 381. Xu and Li point out that most nations recognising the PRC simply “take note” or “acknowledge” its claim over Taiwan rather than “accepting” or “supporting” it. Xu Qingxiong and Li Minguin, Xiaodai Guofa Rumen [Hsientai Kuochifa Jumen][An Introduction to International Law] 322-23 (1994). See Chiu, supra note 11. In practice, nations such as the United States and Australia, which do not officially recognise Taiwan, treat it as a de facto state. Attix, supra note 10, at 381-85; Andrew Godwin, Legal Aspects of Australia’s Commercial Relationship with Taiwan, 4 BOND L. REV. 41 (1992). For further discussion of Taiwan’s status, see generally Peng Mingmin and Huang Zhaotang, Taiwan Zai Guojifashang De Diwei [Taiwan Tsai Kuochifashang Te Tiwei] [The Status of Taiwan in International Law] (1995) (Peng Mingmin, a former politics professor at National Taiwan University was the unsuccessful DPP presidential candidate in the 1996 elections and is now a founding member of the Taiwan Independence Party); Lung-chu Chen and W.M. Reisman, Who Owns Taiwan: A Search for International Title, 81 YALE L.J. 599 (1972) (arguing sovereignty over the island has been suspended since the Peace Treaty with Japan left the issue open. They propose that an internationally supervised plebiscite of the people of Taiwan be held to enable them to determine their future status; but cf. Crawford, supra, at 147-49); and Michael Davis, The Concept of Statehood and the Status of Taiwan, 4 J. CHINESE L. 135 (1990) (examining various notions of autonomy and suggests a flexible, intermediate solution for Taiwan’s status may be preferable, neither complete independence nor complete unification).
the other hand, the nature of government has been radically transformed. The Taiwanese constitutional system has now little in common with that of Hong Kong, either under British or PRC rule. OCTS is quite incompatible with it.

A. Hong Kong Under British Rule

The people of British colonial Hong Kong enjoyed little autonomy, nor, until the last decade, was their government accountable to them to any significant extent. The formal constitution of Hong Kong under British rule was a creation of the British authorities, not the people of Hong Kong. It consisted of Letters Patent, supplemented by Royal Instructions, which were passed by exercise of the prerogative power of the Crown to establish a government and make law for a ceded colony. These documents could be amended at any time by the Crown without reference to the wishes of the people of Hong Kong or their elected representatives, who themselves had no power to effect amendments.

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54 Hong Kong Royal Instructions 1917 (as amended to 1 July, 1994) [hereinafter Royal Instructions], reprinted in MINERS, supra note 52, at 254-60, available in LEXIS, Enggen Library, SI File (passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Hong Kong and its Dependencies, Feb. 14, 1917). The Governor and the Legislative Council of Hong Kong are required to conform to and observe the Royal Instructions pursuant to Article XII of the Letters Patent.

55 In this context, this means that the British monarch exercises her or his prerogative in accordance with the policies of the executive government in Britain. Wesley-Smith, The Present Constitution, supra note 52, at 7; MINERS, supra note 52, at 55-56.

56 WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, supra note 52, at 35. Following its defeat in the First Opium War, China ceded Hong Kong Island to the United Kingdom in perpetuity. Treaty of Nanking, Aug 29, 1842 (ratified June 26, 1843). 30 BRITISH AND FOREIGN STATE PAPERS 389 (1858), 390. Kowloon and Stonecutters Island were ceded to the British by the Convention of Peking, Oct. 24, 1860. 50 BRITISH AND FOREIGN STATE PAPERS 10 (1867). The remaining part of the colony, the New Territories, was leased by China to the United Kingdom for 99 years by the second Convention of Peking, June 9, 1898 (ratified Aug. 6, 1898 and entered into force July 1, 1898), reprinted in MINERS, supra note 52, at 246.

57 Letters Patent 1917, supra note 53; art. XX. In addition to the Letters Patent and Royal Instructions, amendments to Hong Kong's formal constitution may be effected by the Parliament of the United Kingdom (in accordance with the doctrine of parliamentary supremacy). WESLEY-SMITH,
The subordination of the Hong Kong government to that of the United Kingdom was reflected in its executive, legislature and judiciary. As Peter Wesley-Smith comments, "the Letters Patent and Royal Instructions... do not presuppose or create a democratic society. Indeed, their fundamental purpose is to announce and preserve control over its colony by the metropolitan power." The head of the executive branch of government in Hong Kong was the Governor who was not elected in Hong Kong, but was appointed by, and derived his powers from, the Crown. He was bound to implement the directives of the Crown and was accountable to it, not to the people of Hong Kong. The Letters Patent also established an "Executive Council" whose members were appointed either by the Governor or by the Crown. While the Executive Council operated in some ways as a Cabinet, the Royal Instructions required the Governor to do no more than consult it; he was not obliged to comply with its decisions.

Legislative power in Hong Kong was exercised jointly by the Governor and the Legislative Council (known as "LegCo"); neither was able to make laws without the other's consent. The powers of LegCo were weak. While it exercised law-making power for Hong Kong and could control Hong Kong's expenditure, it could not force the resignation of the executive government and could be dissolved by the Governor at any time. Its legislative competence was limited in that it could not pass bills...
that were "repugnant to" (that is, inconsistent with) acts of the British Parliament,\textsuperscript{72} or the Letters Patent and Royal Instruments.\textsuperscript{73} In some matters, its bills required the assent of the Crown (not simply the Governor)\textsuperscript{74} and in other matters, where such consent was not needed, those laws could nevertheless subsequently be disallowed by the Crown.\textsuperscript{75} Furthermore, LegCo was not, until shortly before the return of Hong Kong to China, a representative institution.\textsuperscript{76} All of its members were appointed by the Governor until 1985.\textsuperscript{77} It did not consist of a majority of elected members until 1991\textsuperscript{78} and was not fully elected until 1995.\textsuperscript{79} Even then, only one-third of the members were directly elected,\textsuperscript{80} the rest being selected by an Election Committee composed of local government members or from "functional constituencies."\textsuperscript{81}

Ultimate judicial power in Hong Kong was exercised by the Judicial Committee of the Privy Council, a British imperial institution.\textsuperscript{82} The jurisdiction and composition of this body was determined in London, where the Committee was located, not in Hong Kong.\textsuperscript{83}

\textsuperscript{71} See generally, WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, supra note 52, Ch. 7.

\textsuperscript{72} The Colonial Laws Validity Act, 1865, 28 & 29 Vict., ch. 63, § 2 (1865) (Eng.). See WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, supra note 52, 195-99. Note that the Hong Kong Act 1985, supra note 57, together with the Hong Kong (Legislative Powers) Order 1986, supra note 57, and Hong Kong (Legislative Powers) Order 1989, supra note 57, gave the Hong Kong Legislature the power to amend or repeal certain Acts of the British Parliament relating to Hong Kong.

\textsuperscript{73} Att'y Gen'l v. David Chiu Tat-cheong 2 H.K.L.R. 84 (C.A. 1992); see WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, supra note 52, at 199-202.

\textsuperscript{74} Royal Instructions, supra note 54, cl. XXVI listed a range of matters in which the Governor was required to refuse consent. However, if consent was inadvertently given, the ordinance would still become law until it was disallowed by the Crown. Colonial Laws Validity Act 1865, supra note 72, s.4.

\textsuperscript{75} Letters Patent, supra, note 53, art. VIII.

\textsuperscript{76} Wesley-Smith, The Present Constitution, supra note 52, at 9-12.

\textsuperscript{77} MINERS, supra note 52, at 114. See also, Legislative Council, About LegCo (last modified June 7, 1996), http://www.legco.gov.hk/yr95-96/english/about lc/eabout.html. LegCo was established in 1843. It did not include any Chinese members until 1884. Id.

\textsuperscript{78} MINERS, supra note 52, at 115-16.

\textsuperscript{79} Id. See Letters Patent, supra, note 53, art. VI(1) (amended July 1, 1994). Royal Instructions, supra, note 54, cl. XIIA(1).

\textsuperscript{80} Id. See also, Legislative Council, supra note 77.

\textsuperscript{81} "Functional constituencies" represented various interest groups, such as commercial, industrial, trade union and educational sectors. Until the 1995 elections when the constituency was broadened, the number of electors in each sector was comparatively small. MINERS, supra note 52, at 116-118.

\textsuperscript{82} WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, supra note 52, at 138-40. The Governor was empowered to appoint judges for the courts based in Hong Kong. Letters Patent, supra note 53, art. XIV. This power was regulated by the Legislature, which prescribed the organisation of and qualifications of appointment to these courts.

\textsuperscript{83} Id.
In sum, with the partial exception of the last six years of British control when the majority of LegCo positions were filled by election, Hong Kong was ruled undemocratically; its people were largely denied the right to determine the nature and composition of its institutions of government. This denial culminated in the agreement of the United Kingdom to return Hong Kong to China without first obtaining the consent of the people of Hong Kong to that decision, or to the terms upon which the return would occur.

B. Taiwan

1. Taiwan During the Martial Law Period

Until the late 1980's, the people of Taiwan, like those in Hong Kong, enjoyed little autonomy or accountability. Control of the island passed from the Japanese to the KMT government of mainland China at the end of the Second World War, and four years later the KMT retreated there.

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84 Miners claims that the British refrained from introducing democratic forms because such reforms would have antagonised China. MINERS, supra note 52, at 22-23. However, the failure to accord democratic rights to the ethnic Chinese people of Hong Kong is consistent with the generally unfavourable treatment they received at the hands of the British authorities for much of the colonial period. See generally Richard Klein, Law and Racism in an Asian Setting: An Analysis of the British Rule of Hong Kong, 18 HASTINGS INT'L & COMP. L. R. 223 (Winter, 1995). Klein highlights the institutionalised discrimination practised by the British in Hong Kong (id., at 248-59) and laws which implemented racial segregation (id., at 259-67). Although, many of the worst abuses were remedied after the Second World War, it was not until 1974 that Cantonese became an official language of equal status with English (id., at 270), despite the fact that Cantonese was the native language of 98% of Hong Kong's population. Further, even in the 1990's, most senior officials, including the Governor, most judges of the Court of Appeal (Hong Kong's highest court after the Judicial Committee of the Privy Council) and senior bureaucrats, were Europeans (id., at 267-69).

85 See Joint Declaration on Hong Kong, supra note 1.

86 WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, supra note 52, at 55-57. Wesley-Smith suggests that the people of Hong Kong, as a "distinct community" and a "distinct 'people'" should enjoy the right to self-determination. See also Nihal Jayawickrama, The Right of Self-Determination, in HONG KONG'S BASIC LAW: PROBLEMS AND PROSPECTS (Peter Wesley-Smith ed., 1990) (raising the additional argument that the former status of Hong Kong as a non self-governing territory gives its people a right to self-determination). For the purposes of this article, however, it is sufficient to note that whether or not the people of Hong Kong should have a right to self-determination, they have not been in a position to exercise such as right, nor are they likely to be able to do so in the near future.

87 For a comprehensive description and analysis of the constitutional order in Taiwan from 1945 to 1994, see Hwang, supra, note 51.

88 For the history of Taiwan prior to its seizure by the Japanese in 1895, see Chen & Reisman, supra note 51, at 608-11 (1972); TAIWAN: STUDIES IN CHINESE LOCAL HISTORY (Leonard H. Gordon ed., 1970).

89 The Japanese did not formally renounce sovereignty over Taiwan until 1952, when the peace treaty with Japan came into force. See Peace Treaty with Japan, Sep. 8, 1951, 3. U.S.T. 3169 (1952). The treaty entered into effect on Apr. 28, 1952. Owing to the uncertainty as to which government of China was
after their defeat on the mainland by the CCP. The KMT ruled Taiwan under martial law from 1949 to 198790 and established a constitutional order which was anomalous and irregular in several respects.

First, the constitution91 imposed on Taiwan during the martial law period was drafted for the Chinese mainland, and its application to Taiwan was originally to be delayed because the Taiwanese were perceived to be politically backward.92 The constitution establishes a state called the "Republic of China" (ROC) whose boundaries include mainland China and Outer Mongolia,93 even though since 1949 its effective area has been confined to Taiwan.94 It sets up an extremely complex system of separation of powers into five branches (or Yuan), provides for a National Assembly and a President, and establishes central, provincial and district levels of government. This system is more suitable for governing a huge nation, such as China, than a small island like Taiwan.

Second, although the ROC Constitution embodies democratic principles,95 providing for direct or indirect election to governmental
institutions\textsuperscript{96} and an extensive bill of rights,\textsuperscript{97} its normal operation was suspended from 1948 until 1991 by the National Assembly’s adoption of the Temporary Provisions Effective during the Period of Mobilisation for the Suppression of the Communist Rebellion ("Temporary Provisions").\textsuperscript{98} These granted powers to the President of the Republic of China (then Chiang Kai-shek), which would have otherwise been unconstitutional.\textsuperscript{99} Such powers included taking emergency measures without being subject to the normal checks provided by the Legislative Yuan,\textsuperscript{100} serving more than two consecutive terms,\textsuperscript{101} creating extra-constitutional agencies\textsuperscript{102} and prescribing the means for filling casual vacancies in the ROC’s three elected "parliaments," the National Assembly, the Legislative Yuan and the Control Yuan.\textsuperscript{103} 

Third, the articles in the ROC Constitution providing for re-election of the three “parliaments” were suspended by the Council of Grand Justices, the
judicial organ charged with interpreting the Constitution. In 1954, the Council held in Interpretation 31 that owing to the defeat of the KMT in the Chinese Civil War, which the Grand Justices referred to as "the occurrence of a great misfortune" [fasheng zhongda biangu], no general elections for any central governmental organs were to be held until the electorates on the Chinese mainland were regained from the CCP. This ruling continued in effect until 1990, even though it was clear by the end of the 1950s that the CCP could not be driven from the mainland. Although death or retirement of members led to casual vacancies filled largely by people born in Taiwan, in 1989 the majority of seats in the Legislative Yuan and the National Assembly were still held by people elected on the Chinese mainland. As the National Assembly elected the President, the quasi-permanent majority of mainland KMT members ensured the President would hold power without reference to the wishes of the people of Taiwan. Moreover, the National Assembly was also the institution empowered to amend the Constitution.

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105 This interpretation referred only to the Legislative and Control Yuan but its reasoning was later extended to the National Assembly. Interpretation 31 and other interpretations of the Council of Grand Justices referred to in this article are available in LIUFA QUANSHU, supra note 90. There are no official translations into English.


107 Hwang, supra note 51, at 47-50. Beginning in 1969, "supplementary elections" were held to fill the casual vacancies; candidates elected in 1969 were not subject to re-election but candidates from 1972 were. Hungdah Chiu, supra note 103, at 29-30. In 1989, only 10.55% of National Assembly seats were filled by Taiwanese supplementary elections, and only 34.12% of Legislative Yuan seats and 41.51% of Control Yuan members were filled by Taiwanese supplementary elections (owing to the election of a number of representatives for overseas Chinese, the total percentage of members elected to the Control Yuan through supplementary elections was 60.38%). Hwang, at 50. (The math in the original source has been corrected.).

108 XIANFA [R.O.C.] art. 27.

109 If elections to the National Assembly had been held in the early years of KMT rule on Taiwan, they would quite likely have seen its defeat, since the KMT members had been elected on the mainland and, in the years immediately after the flight to Taiwan, lacked a popular base on the island. The loss of the KMT majority in the National Assembly could well have led to the defeat of President Chiang, the KMT leader. It was therefore clear to the KMT leadership that, if the electorate was to be confined to Taiwan, elections for the central organs of government must be avoided.

110 XIANFA [R.O.C.], art. 174. Amendments can be proposed either by the National Assembly or by the Legislative Yuan. See infra, note 199 and accompanying text.
and refused to consider doing so until mainland China was recovered. The Taiwanese could not, therefore, effect constitutional change.

Fourth, as Interpretation 31 suggests, the judiciary, particularly the Council of Grand Justices, legitimated, rather than constrained, the excesses of KMT rule. Since the President appointed the Grand Justices for renewable nine-year terms, he could ensure that they remained compliant. On only one occasion prior to the 1980’s did the Council suggest that a law was unconstitutional, and this decision was disregarded by the Executive and Legislative Yuan.

There are many similarities between Taiwan during the martial law period and Hong Kong during its period as a British colony. Although Hong Kong was ruled as a colony and Taiwan as a part of the “Republic of China,” the Taiwanese were in many ways treated as though they had been colonised. In both cases, a constitutional structure was imposed from outside without reference to popular opinion, and it could not be amended by democratic processes. In both cases, the dominant branch of government was the executive, whose head held wide powers, and was not subject to popular election.

In both cases, the legislature was largely unaccountable to the people. Ultimate judicial authority over the constitutional structure was not exercised both independently and within the jurisdiction (internally)—in Hong Kong, it was exercised independently, but externally, by the Privy Council; and in Taiwan, it was exercised internally, but essentially to confirm KMT rule.

While developing the OCTS model, the PRC might reasonably have viewed it as an advance on the constitutional practices just described, since it offers a “high degree of autonomy” in the exercise of legislative, executive

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111 Hwang, supra note 51, at 60.
112 See Liu, supra note 104, at 557. He attributes this inaction to the “authoritarian political atmosphere,” its reluctance to antagonise the executive and legislative branches, and procedural and jurisdictional limitations contained in the Council Law.
113 XIANFA [R.O.C.], art. 79 and Sifayuan Zuzhi Fa [Szufaytlan Tsuchih Fa][Organic Law of the Judicial Yuan], art. 5, available in LIUFA QUANSHU, supra note 90.
114 Hwang, supra note 51, at 184-85. Interpretation 86 questioned the constitutionality of locating lower courts within the executive rather than the judicial branch of government. However, it did not specifically declare the practice unconstitutional and was not acted upon for 20 years. Liu, supra note 104, at 527.
115 Hwang, supra note 51, at 61.
116 Except in the sense that a minority of the National Assembly were, from 1969, elected in Taiwan and participated in the process of appointing the President. Supra note 107.
117 Until the 1990’s in Hong Kong’s case.
and judicial powers, and increased accountability. However, OCTS has been overtaken by radical reform in Taiwan.

2. **Democratisation**

Between 1986 and 1996, the system of government in Taiwan changed from an authoritarian regime to a liberal democratic state. The reasons for this change and the main events in the process have been extensively analysed elsewhere.¹¹ Eight key reforms are discussed here. They are the lifting of martial law, the abolition of the Temporary Provisions, the revision of the ROC Constitution, the introduction of full elections for the National Assembly, the Legislature and the Presidency, and the increasing independent activism of the judiciary.²²

In 1986, opponents of the KMT who had previously been informally organised as the "dangwai" ("[Personalities] outside the party"), formed the Democratic Progressive Party ("DPP"). This proved to be a catalyst for radical political change. The KMT government initially declared the party

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¹¹ E.g., CONTENDING APPROACHES TO THE POLITICAL ECONOMY OF TAIWAN (Edwin A. Winckler and Susan Greenhalgh eds., 1988); HUNG-MAO TIEN, THE GREAT TRANSITION: POLITICAL AND SOCIAL CHANGE IN THE REPUBLIC OF CHINA (1989); CONSTITUTIONAL REFORM AND THE FUTURE OF THE REPUBLIC OF CHINA (Harvey J. Feldman ed., 1991); Hermann Halbeisen, In Search of a New Political Order? Political Reform in Taiwan; Hung-mao Tien, Dynamics of Taiwan's Democratic Transition; and Fu Hu, The Electoral Mechanism and Political Change in Taiwan, all in IN THE SHADOW OF CHINA, supra note 103; J. Bruce Jacobs, Democratisation in Taiwan, 17 ASIAN STUD. REV. 116 (1993); Thomas B. Gold, Civil Society and Taiwan's Quest for Identity, in CULTURAL CHANGE IN POSTWAR TAIWAN (Stevan Harrell & Huang Chin-chih eds., 1994); Hung-mao Tien and Yun-han Chu, Taiwan's Domestic Political Reforms, Institutional Change and Power Realignment in TAIWAN IN THE ASIA-PACIFIC IN THE 1990s, (Gary Klintworth ed. 1994); STEPHAN HAGGARD & ROBERT R. KAUFMAN, THE POLITICAL ECONOMY OF DEMOCRATIC TRANSITIONS, Ch.8, esp. 292-299 (1995); Hwang, supra note 51, at 79-251 (Hwang provides a useful table setting out the chronology of events between 1986 and 1994 at 146-52). These studies generally link the changes to factors such as: (1) the development of a prosperous, well-educated, and increasingly urbanised population (sharing the island's wealth relatively equitably) desirous of political change; (2) the growing sophistication of opposition forces, who enjoyed increasing success participating in supplementary and local government elections; (3) internal reform of the KMT, including the replacement of many first generation mainland KMT leaders by people born on Taiwan who were more concerned with Taiwanese socio-economic development than with the dream of recovering China, as well as the pursuit of pro-democracy policies by President Chiang Ching-kuo in his later years; (4) confidence within the KMT that it could implement incremental reforms while limiting the opposition's room for manoeuvre and retaining power; and (5) external factors including the increasing diplomatic isolation of the KMT regime, economic reform on the Chinese mainland and the impact of democratisation in the Philippines and South Korea.

¹² The account here draws on the references in the preceding footnote, particularly Hwang, supra note 51, at 79-251.

illegal, but took no further action. 121 In the following year, President Chiang Ching-kuo formally lifted martial law. 122 As a result, new political parties could be formed legally, 123 civilians were no longer subject to military trials, 124 and restrictions on assembly, association, publication and speech were eased. 125

In the wake of the political liberalisation following the lifting of martial law, a process of Constitutional reform commenced. 126 In 1990, the Council of Grand Justices revised Interpretation 31 and held that “considering the current national situation” [zhengzhuan dangqian guoqing], new general elections for the national parliaments must be conducted. 127 The Grand Justices further held that the persons eligible to vote could be determined without regard to those articles in the ROC Constitution which provided that the electorate include the Chinese mainland. 128 This meant that the electorate could be confined to Taiwan. 129

In April 1991, the National Assembly abolished the Temporary Provisions, 130 restoring normal constitutional order, and amended the ROC Constitution so that its operation was, for electoral purposes, confined to the

121 Id. at 126.
122 Martial law was lifted on July 15, 1987.
123 Political parties are now regulated by the Renmin Tuanti Fa [Civic Organisation Law] Ch. 9, which was amended in 1992 to remove the reference to the Temporary Provisions. The law prohibits civic organisations from advocating independence [zhuzhang fenlie guotu], but this has not been effectively enforced against the DPP.
124 Hwang, supra note 51, at 158.
125 Id. at 155, 159, 162-74. For an official U.S. assessment of Human Rights on Taiwan, see U.S. DEPARTMENT OF STATE, TAIWAN HUMAN RIGHTS PRACTICES, 1995 (1996) available in Lexis, World Library, ALLWLD File. While noting a range of problems, the report states that “[t]he Taiwan authorities generally respect the human rights of citizens.” Id. at 2. For an analysis of human rights in contemporary Taiwan, see Hsiao, supra note 95 at 180-187.
126 In 1990, President Lee Teng-hui (elected President by the National Assembly on Mar. 21 of that year) convened a National Affairs Conference (held from June 28 to July 4). This was the first time that the divergent opinions on constitutional reform in Taiwanese society could be publicly discussed and the Conference had a major impact on the reform process. Participants included academics, journalists, and business leaders as well as KMT, DPP and other political figures. Although opinions were divided on constitutional reform, general consensus was achieved on several major issues, such as the abolition of the Temporary Provisions and the need for general elections for the National Assembly and the Legislative Yuan. Chiu, supra note 103, at 33-37. However, the reform agenda remained under KMT control. Hwang, supra note 51, at 141-45; HAGGARD & KAUFMAN, supra note 118, at 299.
127 Interpretation 261. Hwang describes this decision as “the greatest contribution that the Council of Grand Justices has ever made to democratic reform.” Hwang, supra note 51, at 235.
128 Id. See XIANFA [R.O.C.], arts 26 (National Assembly), 64 (Legislative Yuan) & 91 (Control Yuan).
129 The area under control of the ROC/Taiwan government includes the Pescadores Islands (which are part of “Taiwan Province”) and two small islands, Kinmen and Matsu, that are technically part of Fujian province.
Taiwan area. The amendments preserve the Constitution's original text but modify it through "Additional Articles." The Additional Articles were themselves amended by the National Assembly in 1992 and again in 1994. These reforms have democratised the Taiwanese political system in the following ways:

(1) All members of the National Assembly are now elected for four year terms in competitive elections. With the exception of a small number of members representing Chinese abroad, National Assembly members are Taiwanese people elected in Taiwan under universal suffrage. Elections for the National Assembly were held in 1991 and 1996. The National Assembly no longer appoints the President and Vice President but retains its important power to amend the Constitution. Constitutional change cannot now proceed unless both of the major parties agree to it, as the main opposition party, the DPP, gained more than thirty percent of

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131 Amendments passed by National Assembly on 21 April, 1991, promulgated by the President May 1, 1991.
132 This is to maintain the goal of applying the ROC Constitution to the mainland if reunification is achieved. Hwang, supra note 51, at 134-41.
133 For a critical evaluation of the Additional Articles and the amendments to them, see id at 209-52. Further constitutional amendments are likely in 1997 following the all-party National Development Conference held in Taipei December 23-28, 1996. After a walkout by Taiwan's third largest party, the New Party, both the KMT and the DPP reached agreement on issues including redefining the relationship between the various branches of government, and reforming the method of election and powers of the National Assembly. Susan Yu, Conference Maps Shift in Presidential and Legislative Relations, FREE CHINA J., Jan. 4, 1997 at 1.
134 Elections in Taiwan may be described as relatively free and fair; the KMT still enjoys massive financial advantages over the opposition, and unfair access to the free-to-air television. DEPARTMENT OF STATE, supra note 125, at 10.
136 Id. All citizens of the ROC on Taiwan who attain the age of 20 years may vote unless they lack legal capacity or are deprived of the right to vote (other than because of political offences committed under martial law). XIANFA [R.O.C.], art. 130; Gongzhi Renyuan Xuanju Bamian Fa [Kungchih Jenyulan Hsianchû Pamian Fa][Law on the Election and Recall of Public Officials] art. 14, available in LIUFA QUANSHU, supra note 90. There are further restrictions on persons standing for election (such as that the person may not be bankrupt), but these are no longer of a political nature. XIANFA [R.O.C.] art.130; Gongzhi Renyuan Xuanju Bamian Fa [Kungchih Jenyulan Hsianchû Pamian Fa] art.34.
137 AA art. 2 §1 (1994).
138 Id. art 1 §2(4) (1994); id. art.1 §2 (1994). The remaining powers are to elect a Vice-President if the office falls vacant, to recall or impeach the President and Vice-President, and to confirm appointments to the Judicial Yuan, Legislative Yuan and Control Yuan.
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the vote in the 1996 election, and a successful constitutional amendment requires the consent of seventy-five percent of the National Assembly members.139

(2) All members of the Legislative Yuan are now elected for three year terms in competitive elections and are almost entirely Taiwanese people elected in Taiwan.140 General elections were held in 1992 and 1995, and the KMT, whose vote in the 1995 election fell below fifty percent for the first time, holds only a bare (and often unworkable) majority.141

(3) Some rationalisation of the complex constitutional structure has begun.142 There are now only two “parliaments” instead of three. Members of the Control Yuan, formerly elected, are now appointed by the President with the consent of the National Assembly.143 The Council of Grand Justices has ruled that, as a result of this change, the Control Yuan is no longer to be considered a parliamentary institution144 and instead operates now as a constitutionally established independent commission of audit, censure, and impeachment of public officials.145

(4) The President and Vice President are also directly elected for four years in competitive elections by the people of Taiwan.146 They may be elected for no more than two terms.147

139 The quorum requirement is two-thirds. XIANFA [R.O.C.] art. 174. At the 1996 election, the DPP won 99, or 30% of the 334 National Assembly seats. Dennis Engarth, Lee to Focus on Home Affairs, S. CHINA MORNING POST, Mar. 24, 1996.
140 AA art. 3 (1994).
141 The KMT gained 46% of the vote in the 1995 Legislative Yuan elections, the DPP gained 33% and the New Party 13%. Dennis Engarth, Result Aids Lee's Presidential Bid, S. CHINA MORNING POST, Dec. 4, 1995, at 8. The KMT enjoyed a majority of six immediately after the elections (the KMT won 85 seats, the DDP 54, the New Party 21, and Independents 4). CHINA NEWS, Dec. 3, 1995 at 1. However, after the elections, two KMT members representing indigenous people resigned from the KMT and joined the independent grouping in the Parliament. CHINA NEWS, Feb. 7, 1996, at 1.
142 Further simplification of the constitutional structure, including the “downscaling” of the provincial government, was proposed at the 1996 National Development Conference. Yu, supra note 133, at 1.
143 AA art. 6 §2 (1994).
144 Interpretation 325.
145 Although, it is still considered to be one of the five branches of government. Id.
146 AA art. 2 §§1, 6 (1994).
The first direct presidential elections were held in 1996 and won by the KMT candidates Lee Teng-hui and Lien Chan. The extraordinary powers conferred on the President by the Temporary Provisions have been abolished; his or her powers are now regulated by the ROC Constitution and the Additional Articles. The Premier (the “President of the Executive Yuan”) and Cabinet are appointed by the President.

(5) Decisions relating to the dissolution of political parties on constitutional grounds have been transferred from the executive to the judicial branch.

As their decision to require parliamentary elections suggests, the reform of the constitutional system has been accompanied by a changed approach on the part of the Council of Grand Justices. The Grand Justices have been far more prepared to make declarations of unconstitutionality, usually on the basis of inconsistency with the fundamental rights set out in Chapter II of the ROC Constitution. The

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147 AA art. 2 §6 (1994).
148 Lee Sweeps to Victory: Door to Democracy Open, Says President, S. CHINA MORNING POST, Mar. 24, 1996. Lee and Chan gained 54% of the vote.
149 XIANFA [R.O.C.] Ch IV; AA art. 2 (1994). Article 2 of the Additional Articles still enables a President to wield extensive powers; she or he may issue emergency orders (§4) which are subject to the approval of the Legislative Yuan within 10 days, and she or he may convene a National Security Council to determine defence policy (§5—this power is not subject to check).
150 XIANFA [R.O.C.] art. 55 §1, art. 56 (1994). The consent of the Legislative Yuan is required for the appointment of the Premier; these provisions have recently been interpreted by the Council of Grand Justices. Interpretation 419.
151 Article 4, section 3 of the Additional Articles states: “A political party shall be unconstitutional if its goals or activities jeopardize the existence of the Republic of China or free, democratic constitutional order.” AA Art. 4 §3 (1994).
152 Xu Qingxiong argues that both major parties could be said to violate, or at least have violated, this provision. The opposition DPP (which Xu believes was the primary target of the provision) aim to create an independent Taiwan, which would mean that the ROC would cease to exist. On the other hand, the KMT during the martial law era seriously infringed “free democratic constitutional order.” XU QINGXIONG, XIANFA RUMEN [HSIENFA JUMEN][A BASIC GUIDE TO THE CONSTITUTION], 302-03 (1992). However, the Grand Justices have not been asked to rule on this matter and it is unlikely that they would adopt an interpretation that would lead to the dissolution of the major parties.
154 Hwang notes that from October 1985 to September 1994, 11 statutes, 17 administrative orders and 28 court decisions were declared unconstitutional. Hwang, supra note 51, at 184-85.
increase in the number\textsuperscript{154} and source\textsuperscript{155} of petitions (i.e. applications) to the Council also indicates that the institution has gained significant public stature and confidence.

While the majority of decisions of the Council deal with property and litigation rights\textsuperscript{156} the Grand Justices have also been active in curbing many of the abuses which were characteristic of the martial law period.\textsuperscript{157} They have asserted control over their own procedure.\textsuperscript{158} They have invalidated the exercise of discretionary power by the executive if it encroaches on constitutional rights and lacks a clear legislative basis.\textsuperscript{159} They have struck down laws that violate constitutional guarantees of freedom from arbitrary arrest and due process.\textsuperscript{160} They have also removed some of the authoritarian-corporatist controls placed on civil organisations and institutions by the KMT during the martial law period.\textsuperscript{161} In sum, the Council operates reasonably effectively as the supervisor of the constitutional order.

The reforms described here have fundamentally altered the nature of government in Taiwan.\textsuperscript{162} Unlike the people of Hong Kong, who were

\textsuperscript{154} During its fifth term (from 1985 to 1994), the Council received 2784 petitions, compared to 1145 for the Fourth Council. \textit{COUNCIL OF GRAND JUSTICES, JUDICIAL YUAN, THE GRAND JUSTICES AND CONSTITUTIONAL COURT OF THE REPUBLIC OF CHINA, 40 (1995).} It rendered far more interpretations (167) than any previous other term (the next highest figure is 79). \textit{Id.}

\textsuperscript{155} During its fifth term, the Council received 97\% of its petitions from individuals and 72\% of its interpretations related to those petitions, whereas during the first term of the Council almost two-thirds of petitions came from government as opposed to individual citizens, and no interpretations were rendered in relation to the latter. \textit{Id.} at 42.

\textsuperscript{156} Hwang, \textit{supra} note 51, at 184 (see Table 4.3 at 183).

\textsuperscript{157} \textit{See} Sean Cooney, \textit{Arbitrating Reform: Taiwan's Constitutional Court in the Transition to a Liberal Democratic Political Order, in LEGAL INSTITUTIONS AND THE RULE OF LAW IN EAST ASIA: CONSTITUTIONAL AND LEGAL REFORM IN EAST ASIA} (Kanishka Jayasuriya ed., forthcoming 1997).

\textsuperscript{158} Interpretation 371 (Grand Justices Adjudication Law invalid insofar as it prevented lower courts from referring cases involving issues of unconstitutionality directly to the Grand Justices).

\textsuperscript{159} \textit{E.g.}, Interpretation 313 (regulations on air transport containing sanctions were not clearly authorised by the Civil Aviation Law); Interpretation 384 (administrative rules concerning academic courses were not authorised by University Law and violated academic freedom); Interpretation 390 (rules empowering officials to stop work at or close factories were not clearly authorised); Interpretation 394 (rules made under the Building Law conferred excessively broad enforcement powers on local authorities in relation to registration procedures).

\textsuperscript{160} Interpretation (four aspects of the Provisions for the Eradication of Hoodlums found to violate Article 8); Interpretation 392 (Code of Criminal Procedure invalid insofar as it empowered prosecutors to arrest or detain suspects for more than 24 hours without court authorisation); \textit{see} Hwang & Yeh, \textit{supra} note 152.

\textsuperscript{161} Interpretation 373 (ban in Trade Union Law on educational workers organising unions declared unconstitutional; fundamental collective rights of workers explained); Interpretation 384 (aspects of Education Department control over university courses unconstitutional under a broad interpretation of constitutional protection of academic freedom).

\textsuperscript{162} The Taiwanese political system still suffers many flaws, including political violence and corruption. Tozzi, \textit{supra} note 95, at 1245-47; recent dramatic instances include the assassination on Nov.
handed over to the PRC never having enjoyed autonomy and control over their constitutional structure, the people of Taiwan now do enjoy such control.

The OCTS has been predicated on the subordination of the people of Hong Kong and Taiwan to the central government of the PRC, displacing their subordination to Britain and the KMT. As the relationship between the Taiwanese and their government can no longer be characterised as subordination, the continuity in the nature of government achieved in Hong Kong is not now possible in Taiwan. The next Part argues that far from harmonising with the present constitutional framework in Taiwan, OCTS would destroy it.

IV. THE BASIC LAW OF THE HONG KONG SAR AND ITS IMPLICATIONS FOR TAIWAN

A. The Structure of Government

1. Autonomy

The Basic Law provides that under PRC rule, the Hong Kong Special Administrative Region ("HKSAR") "exercise[s] a high degree of

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163 For example, during Taiwan's martial law era, at least, Deng Xiaoping saw negotiations for the reunification of Taiwan taking place between the "two parties," the CCP and the KMT, even though the KMT at that time did not enjoy a popular mandate. See Deng Xiaoping Tan Zhongguo Dalu he Taiwan Heping Tongyi Shexiang, RENMIN RIBAO, Jul. 30, 1983, at 1.

164 See generally, BASIC LAW, supra note 38; WANG, HONG KONG 1997, supra note 16, at 63-128; PETER WESLEY-SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW supra note 52; Albert H Y Chen, Some Reflections on Hong Kong's Autonomy, 24 HONG KONG L.J. 173 (1994); Yash Ghai, A Comparative Perspective, in HONG KONG'S BASIC LAW: PROBLEMS AND PROSPECTS (Peter Wesley-Smith, ed. 1990); Anna M. Han, Hong Kong's Basic Law: The Path to 1997, Paved with Pitfalls, 16 HASTINGS INT'L & COMP. L. REV. 321 (1993); Anthony Neoh, Opinion of a Scholar: Hong Kong's Future: The View of a Hong Kong Lawyer, 22 CAL. W. INT'L L.J. 309, 330-37 (1992). For a Taiwanese perspective, see WANG TAYQUAN, XIAOGANG JIBENFA [HSIANGKANG CHIPENFA][THE BASIC LAW OF HONG KONG] (1995) [hereinafter WANG, XIAOGANG JIBENFA]. On the economic implications of the Basic Law, see John H. Henderson, The Reintegration of Hong Kong into the People's Republic of China: What It Means to Hong Kong's Future Prosperity, 28 VAND. J. TRANSNAT'L L. 503, 528-32 (1995). Several important studies relevant to the Basic Law were completed before it was finally promulgated and should be read with caution, since some of their comments are not applicable to the final draft. See Bundy, supra note 41; THE BASIC LAW AND HONG KONG'S FUTURE (Peter Wesley-Smith & Albert Chen eds., 1988); Cheng, supra note 41; Chiu, supra note 41; Tamanaha, supra note 16; HANNUM, supra note 13, Ch. 8; MICHAEL C. DAVIS, CONSTITUTIONAL CONFRONTATION IN HONG KONG (1989). For perspectives of PRC members of
autonomy and enjoy[s] executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law." The areas in which the HKSAR enjoys independent decision-making power are very broad. The HKSAR maintains its own common law legal system, few national PRC laws apply within it, its judicial system is completely independent from that of the rest of the PRC, and the fundamental rights of its people are arguably better protected. No PRC organ apart from the NPC, its Standing

the Basic Law Drafting Committee, see Zhang Youyu, The Reasons for and Basic Principles in Formulating the Hong Kong Special Administrative Region Basic Law, and its Essential Contents and Mode of Expression, 2 J. CHINESE L. 5 (1988) (Zhang was the Deputy Chairman of the NPC Legal Committee and a member of the Basic Law Drafting Committee); Wu Jianfan, Several Issues Concerning the Relationship between the Central Government of the People's Republic of China and the Hong Kong Special Administrative Region, 2 J. CHINESE L. 65 (1988); Xiao Weiyun, A Study of the Political System of the Hong Kong Special Administrative Region under the Basic Law, 2 J. CHINESE L. 95 (1988); Liu Yiu Chu, Interpretation and Review of the Basic Law of the Hong Kong Special Administrative Region, 2 J. CHINESE L. 49 (1988) (Liu was a Hong Kong based delegate to the NPC).

BASIC LAW, supra note 38, art. 2. Its capitalist system and "way of life" are to be preserved for fifty years. Id. at art. 5.

They are certainly far broader than other areas of the PRC. Compare XIANFA [P.R.C.], (1982), Ch. III Sections 5 and 6. As to whether, compared to other autonomous regions, Hong Kong enjoys a "high degree" of autonomy, see Albert Chen, The Relationship between the Central Government and the SAR, in THE BASIC LAW AND HONG KONG'S FUTURE, supra note 164, at 108-16; Tamanaha, supra note 16; WANG, supra note 16, at 89-112.


The national PRC laws applying to the HKSAR are: (1) the PRC Constitution (although those provisions dealing with the socialist legal system and the normal structure of regional government do not apply under XIANFA [P.R.C.], art. 31); (2) provisions of the Basic Law itself (BASIC LAW, supra note 38, art.18); (3) national laws specified in Annex III of the Basic Law, which concern the PRC capital, calendar, national anthem, national flag, national day, national emblem, territorial sea, nationality, and diplomatic privileges and immunity (id. art. 18); and; (4) interpretations of the Basic Law made by the NPC Standing Committee (id. art. 158). The purported limited application of the PRC Constitution is problematic. The Constitution is the fundamental law of the PRC and article 31 does not appear sufficiently specific to authorise the establishment of a SAR whose capitalist system contradicts other constitutional provisions (such as the preamble and arts. 1, 5, and 6) which create a socialist system. See Cheng, supra note 41, at 65-72. However, the NPC has decided that the Basic Law is constitutional. Decision of the National People's Congress on the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted at the Third Session of Seventh National People's Congress on Apr. 4, 1990, reprinted in BASIC LAW, supra note 38, at 206.

Id. at arts. 2, 19, 81, 82. The courts in the HKSAR do not, however, enjoy final authority in interpreting the Basic Law, which lies with the NPC Standing Committee. Id. art. 158; see infra notes 313-317 and accompanying text.

BASIC LAW, supra note 38, at 70-73. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and various International Labor Organization ("ILO") conventions made applicable to Hong Kong under British rule continue to apply. Id. art. 39. Many of these covenants have not been ratified by China and it is unclear how they may be
Committee and the State Council (the Central People’s Government (‘‘CPG’’)), and no regional government may interfere with the HKSAR’s affairs.

In contrast to the rest of China, the HKSAR practices a capitalist, rather than a socialist economic system. The HKSAR’s finances are independent from the CPG, which cannot levy taxes in the HKSAR or require the HKSAR to hand over revenue. The HKSAR government may formulate its own monetary and financial policies. The region has its own currency, it is a separate customs territory, largely controls its own shipping and civil aviation, issues its own passports, and maintains its own education system, scientific, cultural, sport and social security, in enforced, or reporting obligations met. See Nihal Jayawickrama, Human Rights in Hong Kong: The Continued Applicability of the International Covenants, 25 HONG KONG L. J. 171 (1995) (arguing that the HKSAR succeeds to the obligation, previously undertaken by the United Kingdom, to make periodic reports on the enjoyment of the Covenant rights to the UN Human Rights Committee). See generally Michael Davis, Human Rights and the Founding of the Hong Kong Special Administrative Region: A Framework for Analysis, 34 COLUM. J. TRANSNAT’L L. 301 (1996). At the time of writing, the future status of Hong Kong’s Bill of Rights Ordinance 1991 was uncertain. See Sharon Cheung, Warning Given of SAR Legal Headache, Jan. 24, 1997. Note that Taiwan, because it is not a state, is not a signatory to the Covenants. Hsiao, supra note 95, at 184-85. Hsiao argues that it is, however, bound by the customary international law on human rights. See XIANFA [P.R.C.], art. 57. Together with its Standing Committee, its permanent body, it exercises the state’s legislative power. Id. art. 58. The NPC is empowered inter alia to amend the Constitution, to supervise its enforcement, to enact basic laws and to elect and remove from office the President and the members of the State Council. Id. art. 62. The NPC Standing Committee is empowered inter alia to interpret the Constitution and laws, to enact laws other than basic laws, and to supervise the work of the State Council, the Central Military Commission, the Supreme People’s Court and the Supreme People’s Procuratorate. Id. art. 67. The State Council corresponds to the Central People’s Government and is the highest organ of state administration, the executive body of the NPC. Id. art. 85. Note that, as the PRC is a socialist system, the doctrine of separation of powers does not apply.

171 The NPC is the highest organ of state power in the PRC. XIANFA [P.R.C.], art. 57. Together with its Standing Committee, its permanent body, it exercises the state’s legislative power. Id. art. 58. The NPC is empowered inter alia to amend the Constitution, to supervise its enforcement, to enact basic laws and to elect and remove from office the President and the members of the State Council. Id. art. 62. The NPC Standing Committee is empowered inter alia to interpret the Constitution and laws, to enact laws other than basic laws, and to supervise the work of the State Council, the Central Military Commission, the Supreme People’s Court and the Supreme People’s Procuratorate. Id. art. 67. The State Council corresponds to the Central People’s Government and is the highest organ of state administration, the executive body of the NPC. Id. art. 85. Note that, as the PRC is a socialist system, the doctrine of separation of powers does not apply.

172 BASIC LAW, supra note 38, art. 22.

173 Until 2047. Id. art. 5.

174 The HKSAR has an independent taxation system. Id. art. 108.

175 Id. art. 106.

176 Id. art. 110.

177 Id. art. 111. The HKSAR government also controls the region’s exchange fund. Id. art. 113.

178 Id. art. 116.

179 Id. Ch. V. sec. 3 (special permission is required for warships). Id. art. 126.

180 Id. Ch. V. §4. These provisions contain a number of limitations (which generally involve sovereignty issues) on the HKSAR government’s authority.
and labour\textsuperscript{187} policies, as well as regulatory structures for the professions.\textsuperscript{188} It can, to a limited extent, engage in international relations under the name “Hong Kong, China.”\textsuperscript{189}

If these provisions were applied to Taiwan, its people could clearly, on one level, continue to enjoy control over many aspects of their social, economic, legal and political life. Reunification on these terms might, in fact, lead to relatively little surface change. However, other provisions in the Basic Law indicate that, in constitutional terms, reunification on the PRC’s terms would significantly reduce Taiwan’s autonomy.

First, article 1 of the Basic Law, in stating that the HKSAR “is an inalienable part of the People’s Republic of China,” makes clear that the HKSAR has no sovereignty of its own. The people of Hong Kong are subject to PRC rule whether or not they so choose. Neither the Basic Law nor any other PRC legislation gives them the right to secede should they express such a desire (for example, through a plebiscite).

Second, the Basic Law reflects the unitary structure of the PRC government set out in the PRC Constitution.\textsuperscript{190} The HKSAR is not a state in a federal system\textsuperscript{191} but rather a “local administrative region” directly under the authority of the CPG.\textsuperscript{192} From the PRC’s perspective therefore, the governmental institutions of the HKSAR may not exercise any inherent power.\textsuperscript{193} They enjoy a high degree of autonomy only because it has been conferred upon them by the NPC enacting the Basic Law\textsuperscript{194} and they may exercise any powers not enumerated in the Basic Law only if PRC organs grant those powers.\textsuperscript{195} Furthermore, the people of the HKSAR cannot

\begin{itemize}
\item[\textsuperscript{187}] Id. art. 147.
\item[\textsuperscript{188}] Id. art. 142.
\item[\textsuperscript{189}] Id. Ch. VII.
\item[\textsuperscript{190}] See XIANFA [P.R.C.] art. 62 (discussing NPC powers, including to amend PRC constitution and enact basic statutes, such as the Basic Law etc.); art. 67 (discussing NPC Standing Committee powers, including to interpret constitution and statutes, amend major statutes and enact lesser laws, and annul laws made by regional governments which contravene laws made by central government organs, etc.); and art. 89 (discussing State Council powers, including to annul inappropriate decisions of regional government organs). Chiu, supra note 41, at 85-86.
\item[\textsuperscript{191}] See, e.g., Wu Jianfan, supra note 164, at 73 (Wu was a member of the Hong Kong Basic Law Drafting Committee); WANG, XIANGGANG JIBENFA, supra note 164, at 25-28, 78-80.
\item[\textsuperscript{192}] BASIC LAW, supra note 38, art. 12.
\item[\textsuperscript{193}] For example, because the Legislative Council’s powers are derived entirely from the PRC central government, it has no residual powers. Zhang, supra note 164, at 7; Wu Jianfan, supra note 164, at 73-74.
\item[\textsuperscript{194}] BASIC LAW, supra note 38, art. 2. See Tamahara, supra note 16, at 42.
\item[\textsuperscript{195}] BASIC LAW, supra note 38, art. 20. The relevant organs are the NPC, the NPC Standing Committee, and the State Council.
\end{itemize}
amend the Basic Law, and therefore cannot change their own constitutional structure; only the NPC may do so.196 Nor can they resist any constitutional change197 or a reduction in their autonomy should the NPC decide to effect it.

These arrangements would greatly diminish Taiwan’s autonomy and are not at all likely to be feasible on the island. In Hong Kong, the constitutional changes required for the Basic Law to become operational were made by the British and PRC governments and did not require nor receive the consent of the people of Hong Kong. On the other hand, if a Basic Law of Taiwan is to be implemented in accordance with existing constitutional procedures in Taiwan, then the ROC Constitution—insofar as it is the fundamental constitutional document of Taiwan198—would have to be repealed and replaced by an enactment of the NPC. Now, the ROC Constitution may only be altered if an amendment proposal is passed by three-quarters of the National Assembly, or the Legislative Yuan.199 It is almost inconceivable that these bodies would agree to repeal the Constitution and surrender entire control over the political structure of Taiwan to the National People’s Congress in Beijing.200 Such a surrender, once made, would be irrevocable. Moreover, as OCTS maintains a unitary system, the National Assembly and the Legislative Yuan would lose the power to determine definitively even their own composition and functions (which they might retain if a federal model were adopted). They would then

196 Id. art. 159. The HKSAR may propose an amendment, but the process is very cumbersome: Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People’s Congress by the delegation of the Region to the National People’s Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People’s Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region.

197 See WANG, XIANGGANG JIBENFA, supra note 164, at 35.

198 While according to the original provisions of this constitution, this state includes mainland China (art. 4), the enactment of the additional articles confining the franchise to the Taiwan area means that sovereign state is effectively Taiwan. See supra notes 131-133, and accompanying text.

199 XIANFA [R.O.C.] art. 174: Amendments to the Constitution shall be made in accordance with one of the following procedures:

(1) Upon the proposal of one-fifth of the total number of the delegates to the National Assembly and by a resolution of three-fourths of the delegates present at a meeting having a quorum of two-thirds of the entire Assembly, the Constitution may be amended [sic].

(2) Upon the proposal of one-fourth of the members of the Legislative Yuan and by a resolution of three-fourths of the members present at a meeting having a quorum of three-fourths of the members of the Yuan, an amendment may be drawn up and submitted to the National Assembly by way of referendum . . . .

200 Hwang writes that the Taiwanese are “a potential veto” on reform of Taiwan-China relations. Hwang, supra note 51, at 322; see also Tozzi, supra note 95, at 1243-45.
exist, not as an expression of the will of the Taiwanese people, but because of a decision of the NPC.

Indeed, the position of Taiwan under OCTS could be even worse than that of Hong Kong. In contrast to Hong Kong, where the Joint Declaration, an agreement binding on China at international law, may constitute a check on the NPC’s capacity to amend the Basic Law, there would be no international restraint on the NPC amending a Basic Law of Taiwan. As Wang Tayquan, a professor at National Taiwan University Law School, concludes:

[U]nder one country two systems, which is constructed upon the foundations of a unitary system . . . Taiwan obviously has no reason to unite under the PRC’s sovereignty and abandon its current status, consigning itself to a local government, the limits of whose autonomy is entirely determined by the People’s Republic of China.

2. Accountability

In the unlikely event that the Taiwanese governmental organs relinquish their authority over their structure to the NPC, what influence could the people of Taiwan expect to have over NPC decision-making? The case of Hong Kong is instructive. The Hong Kong representatives constitute a tiny minority of delegates to the NPC (as do PRC appointed representatives from Taiwan). Given the respective populations of Hong Kong and the rest of the PRC, this outcome is inevitable, regardless of the nature of the political system. However, there are still further limits on

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201 Zhang, supra note 164, at 15.
202 HANNUM, supra note 13, at 136; Yash Ghai, A Comparative Perspective, supra note 164, at 16-21. See, contra, Paul Vitrano, Note, Hong Kong 1997: Can the People’s Republic of China Be Compelled to Abide by the Joint Declaration? 28 GEO. WASH. J. INT’L & ECON. 445 (1995). Vitrano argues that it is unlikely that the PRC will abide by the Joint Declaration because it considers the UK’s claimed sovereignty over Hong Kong was based on a “Unequal Treaty” and thus void, and because it is unlikely to accept adjudication or enforcement by a third party, such as the International Court of Justice (“ICJ”). The PRC has rejected Britain’s proposal to refer the legality of its “provisional legislature” to the ICJ. Chris Yeung, UK Challenges Provisional Body: Let International Court of Justice Settle Legality of Shadow Legislature, Britain Urges, S. CHINA MORNING POST, Dec. 21, 1996 at 1; see infra note 297-298.
203 See Chiu, supra note 41, at 90-91.
204 WANG, XIANGGANG JIBENFA, supra note 164, at 28; see also Chiu, supra note 41, at 89.
205 The Eighth National People’s Congress has 29,200 delegates. ZHONGGUO NIANJIAN [CHUNGHUO NIENCHEN] [CHINA YEARBOOK], 23 (1995). There are 26 Hong Kong delegates. Ren Xin, A Beginning for Democracy in Hong Kong, BEIJING REV., Jan 13-19, 1997, p.5.
accountability of the NPC to Hong Kong. While the Basic Law provides that the residents of the HKSAR may elect deputies to the NPC,\textsuperscript{206} the Law does not stipulate whether these elections are to be competitive and open. However, as the PRC is not a multi-party democracy (at least insofar as that system is understood in liberal democracies),\textsuperscript{207} elections for NPC members in the rest of China lack these characteristics. Thus, viewpoints in Hong Kong which are critical of PRC central government goals may not be adequately represented in the NPC.

This concern is substantiated by the PRC’s approach to constituting bodies responsible for the drafting and implementation of the Basic Law. Hong Kong representatives on the Basic Law Drafting Committee and its advisory body, the Basic Law Consultative Committee, both of which were established in 1985 to prepare the Basic Law,\textsuperscript{208} were not elected. They were appointed from conservative business and professional elites, who were, at best, generally lukewarm on democratic reform.\textsuperscript{209} The Basic Law, does not, therefore, necessarily reflect the will of the majority people of Hong Kong who were not able to select representatives democratically for the key decision-making bodies.

Furthermore, the lack of democratic participation in decision-making is not confined to the drafting of the Law, but extends to its implementation. The membership of the Basic Law Committee,\textsuperscript{210} which is the key advisory

\textsuperscript{206} Basic Law, supra note 38, art. 21.

\textsuperscript{207} In a reply to the U.S. 1995 Human Rights Report, the Information Office of the PRC State Council issued an article rejecting U.S. allegations that China was a “one-party autocracy” and stating that “over the past decades, China has practised multi-party co-operation led by the communist party.” (emphasis added). Reported in China Refutes US Human Rights Report, XINHUA NEWS AGENCY, Mar. 28, 1996, available in LEXIS, ASIAPC Library, ALLNWS File. Competitive elections have been introduced at the local level. \textit{id}.

\textsuperscript{208} Ming 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 38, at 4. The Basic Law Drafting Committee (“BLDC”) consisted of 36 mainland members and 23 Hong Kong members; the Basic Law Consultative Committee consisted of 180 members from Hong Kong. \textit{id} at 7.

\textsuperscript{209} \textit{id} at 7-8. However, the NPC appointed two pro-democratisation activists, Martin Lee and Szeto Wah to the BLDC. Wang, Hong Kong 1997, supra note 164, at 67; Chiu, supra note 41, at 88. The BLDC was responsible to the NPC, not to the people of Hong Kong.

\textsuperscript{210} Established by the Decision of the National People’s Congress to Approve the Proposal by the Drafting Committee for the Basic Law of 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, adopted at the Third Session of the Seventh’s National People’s Congress, Apr. 4, 1990 [hereinafter Decision on Committee for the Basic Law].
body to the NPC and its Standing Committee on the Law's modification, is appointed rather than elected. This form of representation is a poor alternative to the control the people of Taiwan currently enjoy over the institutions in Taiwan empowered to determine the island's constitutional structure. The National Assembly and the Legislative Yuan are accountable to the Taiwanese people because their members are selected through regular, direct, open, competitive elections. Since constitutional amendments require a super-majority to succeed and since no one political party can command such a super-majority, no amendments will occur without the consent of the representatives of both major parties, which enjoy the support of an overwhelming majority of Taiwanese people. The contrast between this level of popular control over constitutional matters and that exercised by the people of Hong Kong over the content of the Basic Law thus provides a further reason for the Taiwanese to reject OCTS.

The discussion so far in this part has identified a fundamental reason why OCTS cannot be feasibly implemented in contemporary Taiwan—the transfer of ultimate authority over constitutional matters to the NPC denies the Taiwanese the right they currently enjoy to conclusively determine their governmental framework. This in itself is sufficient for OCTS to be unworkable. However, a Basic Law of Taiwan is also likely to be rejected because of its substantive content. The following discussion examines how the Basic Law of Hong Kong deals with the exercise by the HKSAR of executive, legislative and judicial power and compares this position to Taiwan. The Basic Law of Hong Kong was drafted with the colonial governmental structure in mind and the detailed workings of a "Taiwan Special Administrative Region" would no doubt be considerably different.

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211 The Committee is responsible for advising the Standing Committee of the NPC, or the NPC itself, on the invalidation of HKSAR laws, the addition or deletion of national PRC laws applicable in the HKSAR under Annex III of the Basic Law, and the interpretation and amendment of the Basic Law: Basic Law, supra note 38, arts. 17, 18, 158, 159.

212 It consists of twelve members appointed by the NPC Standing Committee. The six Hong Kong members are appointed on the nomination of the HKSAR Chief Executive, the President of the Legislative Council, and the Chief Justice of the Court of Final Appeal. Decision on the Committee for the Basic Law, supra note 38, art. 4. Tamanaha sees this body as "a legitimizing mechanism for the Standing Committee when imposing its will contrary to the will of the government of Hong Kong." Tamanaha, supra note 16, at 56.

213 The Legislative Yuan may propose constitutional amendments, which the National Assembly then votes on by way of "referendum." Xianfa [R.O.C.] art. 174.

214 See supra notes 139-141 and accompanying text.
Nevertheless, what is likely to be similar is the relationship between the central PRC government and the “SAR.”

B. Executive Power

Under the Basic Law, the HKSAR is vested with executive power. However, the exercise of that power is subject to constraints imposed by the national PRC government. The Basic Law both limits the HKSAR executive’s autonomy and requires that the executive be accountable to the CPG. This is achieved in particular through the provisions concerning the function and appointment of the Chief Executive, the person in whom executive power is concentrated.

Control over the Chief Executive ensures command over the key operations of the HKSAR government. The Chief Executive is head of the HKSAR government and represents the region. He or she plays a key role in staffing the executive and judicial branches, through nominating or recommending the removal of key officials to the CPG, appointing and removing judges and other holders of public office as well as members of the Executive Council, the quasi-Cabinet which assists the Chief Executive in policy making. The Chief Executive’s functions include implementing the laws of the HKSAR, signing and promulgating laws, deciding on government policies, conducting external affairs where authorised by the CPG, and approving HKSAR budgetary measures. An analysis of the Chief Executive’s autonomy and accountability is thus crucial to determining the status of executive government as a whole.

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215 BASIC LAW, supra note 38, arts. 2, 16.  
216 Id. arts. 48(1), 60.  
217 Id. art. 43.  
218 Id. art. 48(5). These officials are the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, the Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise. See also id. art. 61.  
219 Id. art. 48(6). This is subject to procedures discussed infra.  
220 Id. art. 48(7).  
221 Id. art. 55.  
222 Id. arts. 54, 56.  
223 Id. art. 48(2).  
224 Id. art. 48(3).  
225 Id. art. 48(4).  
226 Id. art. 48(9).  
227 Id. arts. 48(10) & 62.
1. **Autonomy**

The Chief Executive’s policy-making autonomy, and that of his or her government is limited in several ways. First, the Chief Executive is obliged to implement CPG directives. There are no mechanisms set out in the Basic Law which would enable the Chief Executive to challenge the validity of the directives even where those directives may violate the autonomy provisions in the Basic Law. If the directive power were exercised frequently by the CPG, it would permit the CPG to dominate the Chief Executive and the HKSAR government.

Second, the Chief Executive and her or his government can act only within the scope of authority conferred on the HKSAR by the Basic Law. The Basic Law sets out a range of policies that the HKSAR must follow. For example, the HKSAR must take the low tax levels pursued under the British as a reference for its own taxation system, it must preserve Hong Kong’s status as an international financial centre, it must safeguard the operation of financial markets, impose no foreign exchange control policies and allow the free flow of capital within and in and out of the Hong Kong, and maintain free trade. These policies may or may not be desirable in themselves. However, the point is that the HKSAR authorities may not change them, even if they perceive it is in the public interest and there is a clear majority of people of Hong Kong who wish them to do so.

Both of these restraints on autonomy if applied to Taiwan would reduce the existing powers of executive government. The structure of executive government in Taiwan is quite different from that in Hong Kong.
under both British and PRC rule, so a direct comparison is not possible. There is no one figure who is the head of both the “state” and the government. The head of state in Taiwan is the President,238 but executive power in Taiwan is vested in the Executive Yuan,239 whose head, appointed by the President with the consent of the Legislative Yuan, is the Premier.240 Between them, they exercise similar powers to the Chief Executive of the HKSAR,241 including the appointment of the Cabinet.242 The division of responsibility between the President and the Premier has in practice become blurred and controversial.243 Nevertheless, this complexity does not alter two significant facts.

First, the executive structure in Taiwan is not currently subject to outside direction, and this would not be the case if the approach in the Hong Kong Basic Law were followed in Taiwan. Second, in contrast to its counterpart in the HKSAR, the executive in Taiwan is not required at present to implement specific policies. The Constitution does contain statements of fundamental national policies,244 but according to Taiwanese constitutional scholars these are guidelines only; they are not binding on the executive and cannot be enforced in a court.245

The PRC’s White Paper on Taiwan promises that upon reunification under OCTS, Taiwan would be able to regulate its own political and military affairs [... zheng, jun, ... shiyi dou zixing guanli].246 This indicates that Taiwan would enjoy more governmental autonomy than Hong Kong. Certainly, the Hong Kong SAR does not have its own military forces.247 However, the promise is extremely vague. Does it mean that the executive in Taiwan will not be subject to the same controls as that in Hong Kong, or that it may retain the current structure of the executive (a President and Premier instead of a Chief Executive), or both, or neither? It is difficult to

\[\text{XIANFA [R.O.C.]} \text{ art. 35. See generally Ch. IV and AA art. 2 (1994).}\]
\[\text{XIANFA [R.O.C.]} \text{ art. 53.}\]
\[\text{Also referred to as President of the Executive Yuan id. arts 54 & 55.}\]
\[\text{See XIANFA [R.O.C.] Ch. IV, V, and AA art 2 (1994).}\]
\[\text{Id.; XIANFA [R.O.C.] art. 56.}\]
\[\text{With the enactment of article 2 of the Additional Articles (introducing direct presidential elections and strengthening presidential powers), Taiwan seems to be gravitating towards a semi-presidential or presidential system of government. See Hwang, supra note 51, at 232-34, 240-49. Matters are further complicated because the current Vice-President, Mr Lien Chan, is also the Premier. This was challenged as unconstitutional by several legislators. The Council of Grand Justices, although ruling that the arrangement was constitutional, questioned whether it was appropriate. Interpretation 419.}\]
\[\text{XIANFA [R.O.C.]} \text{ Ch XIII; AA, art. 9 (1994).}\]
\[\text{See LIN ZIYI, supra note 104, at 156-160.}\]
\[\text{TAIWAN AFFAIRS OFFICE AND INFORMATION OFFICE, supra note 3, at v (Chinese version at 16).}\]
\[\text{BASIC LAW, supra note 38, art. 14.}\]
reconcile the Taiwanese executive authorities enjoying freedom from CPG direction with a unitary political system where the CPG "exercise[s the power of ] unified leadership over the work of local organs of state administration." Similarly, even if Taiwan were to have its own military forces, it is doubtful that the head of the executive in the "Taiwan SAR" would have supreme command over them, as the President of the ROC does now. This would seem incompatible with the role of the PRC Central Military Commission as director of the PRC's armed forces. The scope of the promise in the White Paper obviously needs clarification.

2. Accountability

As the Chief Executive is the most powerful figure in the HKSAR government, an assessment of his or her accountability to the Hong Kong people is crucial to determining their capacity to influence administrative decision-making in the region. The Basic Law addresses the accountability of the Chief Executive in two ways. It specifies how the Chief Executive is to be selected, and to whom the Chief Executive, once selected, is to be responsible.

The Basic Law provides that the Chief Executive must be a Chinese citizen who is a permanent resident of the HKSAR, has ordinarily resided there for a continuous period of not less than twenty years, and has no right of abode in any foreign country. This accords with the PRC's principle of "Hong Kong people governing Hong Kong." However, although the Basic Law states that the "ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures," there is no guarantee that this will occur. The method for selecting the Chief Executive is set out in Annex I of the Basic Law. Until 2007, at least, the candidate for Chief Executive is chosen by an Election Committee of 800 members, divided into four groups of 200 chosen from

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249 XIANFA [R.O.C.] art. 36.
250 See XIANFA [P.R.C.] art. 93.
251 BASIC LAW, supra note 38, arts 3 & 44. The principal officers of the HKSAR must also satisfy these requirements, except that the residence requirement is only 15 years. Id. art. 61. See also, in relation to the Executive Council, id. art. 55.
253 BASIC LAW, supra note 38, art. 45. Compare art. 68.
four designated occupational or social sectors.254 This system is clearly derived from the "functional constituencies" used in LegCo elections under British rule.255 It is undemocratic in that the sectors vary greatly in the number of people they cover (the value of some votes will greatly exceed that of others) and, depending how the sectors are defined, many Hong Kong residents may not fall within any of the sectors and thus have no vote.256 The system can be amended after 2007, but this requires the consent of two-thirds of the Legislative Council, the Chief Executive and the NPC Standing Committee.257

Even were this selection system to reach its "ultimate aim" and produce an electoral body representing all the people of Hong Kong equally, it would still not provide full accountability. This is because the "selection" of the Chief Executive by the Election Committee is really equivalent to nomination only. The Chief Executive is appointed by the CPG, which therefore retains ultimate control.258 Thus, an election could be held within the HKSAR, a candidate selected and then the whole process effectively voided by a refusal of the CPG to approve that person.259

Since the elections of 1996, the President of the ROC has been directly elected by universal suffrage.260 The Premier, although not directly elected, is appointed by the President with the consent of the Legislative

254 These are (1) industrial, commercial and financial sectors; (2) the professions; (3) labour, social services, religious and other sectors, and; (4) members of the Legislative Council, representatives of district-based organisations, Hong Kong deputies to the NPC and representatives of Hong Kong members of the National People's Political Consultative Conference. Id. Annex I para.2. The composition of each sector and method of selecting representatives is to be stipulated by laws enacted by the Legislative Council. Id. Annex I para 3. The first Chief Executive was chosen by a special Selection Committee composed of 400 Hong Kong permanent residents, 100 from each sector. All were chosen by a "Preparatory Committee" appointed by the NPC. See Decision of the National People's Congress on the Method for the Formation of the First Government and First Legislative Council of the Hong Kong Special Administrative Region, adopted at the Third Session of the Seventh National People's Congress, 4 April, 1990, available in THE HONG KONG BASIC LAW: BLUEPRINT FOR "STABILITY AND PROSPERITY" UNDER CHINESE SOVEREIGNTY?, supra note 38, at 207. The first Chief Executive is Tung Chee Hwa, selected Dec. 11, 1996 and appointed by Premier Li Peng, Dec. 16, 1997. Ren Xin, A Beginning for Democracy in Hong Kong, BEIJING REV., Jan 13-19, 1997, p.5.

255 See MINERS, supra note 52, at 116-18.

256 Three of the four groups, (1), (2) and (4), in note 253—have much smaller coverage than (3). These groups are generally pro-Beijing. WANG, HONG KONG 1997, supra note 16, at 80.

257 BASIC LAW, supra note 38, at 263.

258 Id. art. 15, 45. WANG, XIANGGANG JIBENFA, supra note 164, at 63-65. Tamanaha points out that HKSAR has less control over its Chief Executive than most autonomous entities, which select their Chief Executive without central government interference. Tamanaha, supra note 16, at 48.

259 The CPG also has power to approve the other key members of the executive, who are nominated by the Chief Executive. BASIC LAW, supra note 38, art. 48(5).

260 See supra note 146, and accompanying text.
Yuan, which is also directly elected.\textsuperscript{261} The introduction of a heavily weighted electoral system would thus diminish democratic government. Further, the President, Premier and other key officials in the executive take office without requiring the confirmation of any body not itself directly accountable solely to the Taiwanese people.\textsuperscript{262} The requirement that the chief officer of an SAR be appointed by the CPG would remove the ability of the Taiwanese people to choose their own head.

The PRC government could, in any Basic Law of Taiwan, preserve the existing Taiwan system of appointing key officials in the executive, instead of insisting on central government approval. The position would then be similar to that of the practice of many autonomous regions, or many federal systems\textsuperscript{263} where the appointment of the head of a state’s administration is not subject to central government confirmation.\textsuperscript{264} Its willingness to do so may be doubted, given the hostility directed at the two main presidential candidates in the 1996 elections.\textsuperscript{265} It is difficult to see how the PRC government could allow a situation to occur in which the head of the Taiwanese administration is a person who was both popularly elected and actively denounced communism and the central government.

The CPG control over the HKSAR Chief Executive does not end with the appointment process. The Basic Law specifically provides that, once appointed, the Chief Executive is accountable to the CPG as well as to the HKSAR.\textsuperscript{266} The significance of this obligation is unclear. The body in the HKSAR to which the Chief Executive and the HKSAR government is accountable is the Legislature.\textsuperscript{267} The Law does not indicate how the Chief Executive would resolve a conflict between these two loyalties or how the CPG would ensure that the Chief Executive remains accountable to it. There is no specific power in the Basic Law which would enable the CPG to

\textsuperscript{261} XIANFA [R.O.C.] arts 55, 62 & 64.
\textsuperscript{262} Id. arts 55, 56; AA art. 2 (1994).
\textsuperscript{263} Such as Australia or the United States.
\textsuperscript{264} See generally Hannum & Lillich, supra note 13, at 219-24; Tamanaha, supra note 16, at 48-49.
\textsuperscript{265} Pringle, supra note 19.
\textsuperscript{266} BASIC LAW, supra note 38, art. 43.
\textsuperscript{267} Id. art. 64. The Chief Executive is accountable to the Legislative Council in that it can impeach the Chief Executive or force him or her to resign. Id. arts 52(2), (3) & 73(9). The Legislative Council must also approve the government’s revenue and expenditure measures. Id. art. 73 (2) and (3). The Legislative Council may generally supervise and investigate the operation of government. Id. art. 73(4) (receiving and debating the policy addresses of the Chief Executive); art. 73(5) (raising questions concerning the work of the government); art. 73(6) debating any issue concerning the public interest); art. 73(8) (receiving and handling complaints from Hong Kong residents); and art. 73(10) (summoning persons to testify and give evidence).
dismiss the Chief Executive for refusing to carry out its directives.\textsuperscript{268} On the other hand, while the Legislative Council can procure the Chief Executive’s resignation, it can only do so after he or she has ordered it to be dissolved.\textsuperscript{269}

Whatever the nature of the Chief Executive’s accountability to the CPG, the fact that it is required would raise objections in Taiwan if a similar provision were imposed there. The executive in Taiwan is accountable only to other branches of government in Taiwan, not to any external authority.\textsuperscript{270} The imposition of another layer of accountability would not only diminish the capacity of Taiwanese institutions to restrain each other, it would further complicate what is already a highly intricate set of relationships between the various arms of government in Taiwan.

C. Legislative Power

1. Autonomy

Legislative power in the HKSAR is vested in the Legislative Council.\textsuperscript{271} Given that very few national PRC laws apply in the HKSAR,\textsuperscript{272} the Legislative Council may make most of the civil, criminal, and administrative law effective in the HKSAR. However, in comparison with

\textsuperscript{268} If the CPG wished to do so, but considered they lacked the power, they could request that the NPC amend the Basic Law.

\textsuperscript{269} The Chief Executive must resign if \textit{inter alia} (1) she or her refuses to pass a bill; (2) the Legislative Council passes it again with a two-thirds majority; (3) the Chief Executive still refuses to sign and dissolves the Council; (4) the new Council passes the bill with a two thirds majority; and the Chief Executive still refuses to sign. \textit{BASIC LAW, supra} note 38, arts 49, 50, 52(2). The Chief Executive must also resign if the Council refuses to pass a budget or other important government bill, and after being dissolved and re-elected, still refuses to pass the bills. \textit{Id.} arts 50 & 52. The Legislative Council can also impeach the Chief Executive. \textit{Id.} art. 73(9).

\textsuperscript{270} For example, the President is accountable to the Legislative Yuan in that it must confirm a presidential decree of martial law or emergency measures. \textit{XIANFA [R.O.C.] art. 39, 43, AA art. 2} (1994). Presidential appointments are subject to confirmation by the Legislative Yuan or the National Assembly \textit{(id. art. 55; AA art. 2, 4, 5, 6)} or must be made on the recommendation of the Premier \textit{(id. art. 56).} The Premier is accountable to the Legislative Yuan in that \textit{(1)} the Legislature must consent to his or her appointment initially and whenever it is re-elected \textit{(id. art. 55; see also Council of Grand Justices Interpretation 387, available in LIUFA QUANSHU, supra note 90 and compare Interpretation 391); and \textit{(2)} the Executive Yuan must report on its administrative policies to the Legislative Yuan, which may request it to alter its policies. If it refuses to do so, the Legislative Yuan can, if it upholds its original resolution by a two-thirds majority, force the Premier to abide by it or resign. \textit{XIANFA [R.O.C.] art. 57 §1, 2.} In addition, budgets bills must be passed by the Legislative Yuan. \textit{Id.} art. 58.

\textsuperscript{271} \textit{Id.} art. 66, 73(1).

\textsuperscript{272} \textit{See supra} note 167, and accompanying text.
the equivalent body in Taiwan, the Legislative Yuan, its legislative competence is considerably restricted.

First, although laws enacted by the Legislative Council do not require the approval of the central government in order to take effect, the Council may not amend the Basic Law or make any law that contravenes it. The catch here is that it is the NPC Standing Committee which decides whether or not a law enacted by the Legislative Council violates the Basic Law. So a Legislative Council enactment could be invalidated if, in the opinion of the Standing Committee, it encroached on the matters within the responsibility of the central government (such as defence or foreign affairs) or the relationship between the central government and the HKSAR. The Standing Committee is not obliged to give reasons for a decision to invalidate, nor is such a decision subject to any time limit. In contrast, once the Legislative Yuan passes a law and that law is promulgated by the President, it may be invalidated only by a judicial finding of unconstitutionality. Furthermore, the Legislative Yuan may, with the consent of the National Assembly, amend the ROC Constitution.

Second, in the event that the NPC Standing Committee declares a state of war or, "by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the region" decides that the Special Administrative Region is in a state of emergency, the CPG may by decree apply national PRC laws to the HKSAR. If this occurred, the legislative autonomy of the HKSAR under OCTS would be effectively destroyed. On the other hand, where a state of emergency occurs in Taiwan, any emergency orders (which are made by the President) are subject to

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273 XIANFA [R.O.C.] art. 62. In contrast to the original constitutional position (which provides for the legislative powers of initiative and referendum), under the Additional Articles the National Assembly cannot enact or annul laws. AA art. 1 (1994); compare XIANFA [R.O.C.] art. 27.

274 Although they must be reported to the NPC Standing Committee, this is for the record only.

275 See supra note 196 and accompanying text.

276 BASIC LAW art. 11, supra note 38, at 170.

277 Id. art. 17, at 171, and art. 160, at 203. The Standing Committee, if it decides the Basic Law has been contravened, cannot amend the law. However, the law loses effect as soon as the Committee "returns" it. This is consistent with the XIANFA [R.O.C.] art. 67, sec. 8. See Wu, supra note 164, at 74-78.


279 BASIC LAW art. 18, supra note 38, at 171-72.

280 WANG, XIANGGANG JIBENFA, supra note 164, at 77-78.
confirmation within ten days of issuance by the Legislative Yuan.\textsuperscript{281} It therefore retains ultimate law-making control.

Third, while a Legislative Council bill does not require the consent of the central government to take effect, it does require the consent of the Chief Executive, whose appointment is, as has been seen, controlled by the CPG.\textsuperscript{282} Should the Chief Executive refuse to sign a bill, the Legislative Council is in a weak position. At most, it can force the Chief Executive’s resignation, but only after a three-step process: (1) the Council repasses the bill with a two-thirds majority, (2) the Chief Executive dissolves the Council but the re-elected members again pass the bill, and (3) the Chief Executive still refuses to sign.\textsuperscript{283} However, a two-thirds majority vote in the Legislative Yuan will override an Executive Yuan veto of its legislation without the legislature being subject to dissolution.\textsuperscript{284}

Fourth, there are also express limitations on the Legislative Council’s legislative competence, even within the limits of the HKSAR. It does not, until at least 2007, have final control over its own voting procedures or over how it is elected,\textsuperscript{285} and any bills relating to government policies require the consent of the Chief Executive.\textsuperscript{286} Its laws must implement free market economic policies.\textsuperscript{287} Further, article 23 of the Basic Law provides that the Council must enact laws:

\begin{quote}
[T]o prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from
\end{quote}

\textsuperscript{281} XIANFA [R.O.C.] art. 43, as amended by AA art. 2 (1994).
\textsuperscript{282} BASIC LAW art. 76, supra note 38, at 184-85.
\textsuperscript{283} BASIC LAW arts. 49, 50, & 52, supra note 38, at 178-79. The resignation of the Chief Executive under these cumbersome conditions still does not necessarily result in the bill being passed. Wesley-Smith, The Legal System and Constitutional Issues, in THE BASIC LAW AND HONG KONG’S FUTURE, supra note 164, at 178.
\textsuperscript{284} XIANFA [R.O.C.] art. 57. Article 57 may be substantially amended by the National Assembly as a result of decisions made by the National Development Conference in Taipei in December 1996. See supra note 142.
\textsuperscript{285} BASIC LAW Annex II, supra note 38, at 204. After 2007 the Annex can be amended by a two-thirds majority vote of the Legislative Council, but this requires the consent of the Chief Executive. Id.
\textsuperscript{286} See WANG, XIANGGANG JIBENFA, supra note 164, at 71.
\textsuperscript{287} See supra notes 230-237, and accompanying text.
The Legislative Yuan is not subject to such limitations. It controls its own procedures and electoral process, subject to the ROC Constitution. It is not subject to the "government policy" restriction, and, as is the case with the Executive Yuan, the fundamental national policies in the ROC Constitution are not binding on it. Nor is it required to enact legislation in the form of article 23 of the Basic Law. Indeed, since such legislation appears to violate fundamental human rights in Chapter II of the ROC Constitution (which unlike the national policies are binding), it would probably be unconstitutional.

2. Accountability

The accountability of the Legislative Council to the people of Hong Kong is greater than that of the Chief Executive. That is, there is no provision in the Basic Law requiring the Legislative Council to be accountable to the CPG. It may therefore be supposed that its members represent their constituents in Hong Kong, not the central government. Moreover, members are appointed by election alone not by the CPG.

However, accountability is nevertheless compromised by the nature of the electoral process, which, like that applying to the Chief Executive, is not fully democratic. The Basic Law ensures that the legislative power will be exercised largely by Hong Kong permanent residents and, as with the Chief Executive, the "ultimate aim" is that Legislative Council members be elected by universal suffrage. But, again, there is no guarantee that this will occur. Until at least 2007, only part of the Council will be directly elected and half the Council will be chosen by "functional
constituencies, the majority of which are likely to reflect pro-Beijing views. The strong rejection by Beijing of the so-called Patten democratic reforms in the final years of British rule, manifested most clearly in the refusal to allow the last LegCo elected under the British to continue after July 1997 indicates its resistance, at this time, towards universal suffrage. Conversely, as discussed above, members of the Legislative Yuan in Taiwan are already chosen in direct, competitive, elections by universal suffrage.

A further concern is the extent to which the people of Hong Kong will be able to form political parties in order to compete for election to the Legislative Council. The Basic Law does not expressly permit the continued operation of political parties. On the other hand, article 23, cited above, may be used to authorise the prohibition of political parties

294 Id. Annex II, sec. 1, at 204.
295 Andy Ho, Provisional Legislators Fail to Inspire Public Support, S. CHINA MORNING POST, Dec. 24, 1996, at 17. Ho comments that the Council is dominated by pro-Beijing business and professional elites. The delimitation of these constituencies is to be determined by the Legislative Council: BASIC LAW Annex II, sec. 2, supra note 38, at 205.
297 This possibility was originally left open by the NPC. See Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region, para. 6, in BASIC LAW, supra note 38, at 208.
298 See Davis, Human Rights and the Founding of the Hong Kong Special Administrative Region: A Framework for Analysis, supra note 170, at 321-29. The Preliminary Working Committee established by the NPC in 1993 decided on Dec. 8, 1994 to establish a provisional HKSAR legislature, which would replace the last LegCo under British rule on July 1, 1997. Id. at 326-27. The NPC passed a resolution in 1993 that that LegCo, and other elected bodies be disbanded upon the PRC takeover. Id. at 327-28. See also Chris Yeung & Linda Choy, NPC Votes to End HK Political Structure, S. CHINA MORNING POST, Sept. 1, 1994 at 1. Several commentators have argued that this does not accord with the Basic Law provisions regulating the selection of the legislature between 1997 and 2007. See, e.g., Yash Ghai, Back to Basics: The Provisional Legislature and the Basic Law, 25 HONG KONG L.J. 2 (1995); Stephen Law Shing-yan, The Constitutionality of the Provisional Legislature, 26 HONG KONG L.J. 152 (1996). Britain has claimed that the establishment of the legislature violates the Joint Declaration. Chris Yeung, UK Challenges Provisional Body: Let International Court of Justice Settle Legality of Shadow Legislature, Britain Urges, S. CHINA MORNING POST, Dec. 21, 1996 at 1. The Provisional Legislative Council was elected by the Selection Committee who selected the first Chief Executive on Dec. 21, 1996. See supra note 254 and accompanying text. Thirty-three of the members of the last Legislative Council under British rule were elected to the Provisional Legislative Council. Ren Xin, A Beginning for Democracy in Hong Kong, BEIJING REV., Jan 13-19, 1997, at 7. However, this appears to have occurred as a result of a direction to the Selection Committee by the Chinese Vice-Premier Qian Qichen. Ho, supra note 295, at 17. For a discussion of the opposition of the PRC to full democratisation during the Basic Law drafting process, see CHAN & CLARK, supra note 38, at 13-29.
299 See supra notes 140-141 and accompanying text.
300 It does, however, protect freedom of speech and of assembly. BASIC LAW art.27, supra note 38, at 174.
having foreign links\textsuperscript{301} or engaging in "subversion against the Central People's Government." Moreover, the Basic Law does not clarify the position of the CCP in Hong Kong and in particular its relationship with the HKSAR government; the extent to which the CCP tolerates rivals may be a key factor in determining the outcome of the next Legislative Council election, due in 1999.\textsuperscript{302}

Would Taiwan's political parties be able to operate freely in a "Taiwan SAR?" The PRC \textit{White Paper} states that Taiwan will be able to maintain its own political parties,\textsuperscript{303} but this policy was devised when Taiwan was under martial law and there was effectively only one party, the KMT. Now there are many, and, of much concern to Beijing, several of them advocate Taiwanese independence.\textsuperscript{304} At present, the power to dissolve political parties for unconstitutional activities in Taiwan is vested in the Council of Grand Justices, sitting as a constitutional court.\textsuperscript{305} This has, so far, not been exercised against a party advocating independence. On the other hand, the Basic Law of Hong Kong specifically aims to prohibit conduct relating to "secession" [\textit{fenlie guojia \ldots de xingwei}], and this seems on its face to prohibit parties advocating Taiwanese independence.

D. Judicial power

1. Autonomy

As far as judicial power is concerned, the HKSAR does indeed exercise a very high degree of autonomy. According to the Basic Law, the legal system of the HKSAR is based on the common law and thus is quite separate from the socialist legal system practised in the rest of China. The judges of the HKSAR exercise independent\textsuperscript{306} judicial power\textsuperscript{307} and in contrast to the position under British rule, where the Privy Council was the

\textsuperscript{301} But cf. article 149, which allows non-governmental, non-political organisations to maintain international links. \textit{Id.} art. 149, at 199.


\textsuperscript{303} \textsc{Taiwan Affairs Office and Information Office, supra note 3, at v. Chinese version, supra note 3, at 16.}

\textsuperscript{304} See supra note 50 and accompanying text.

\textsuperscript{305} A.A. art. 4\S 2, §3 (1994). \textit{See supra note 151 and accompanying text.}

\textsuperscript{306} Article 85 of the Basic Law, supra note 38, provides that the HKSAR courts "shall exercise judicial power independently, free from any interference." \textit{Compare} the similar wording in \textit{Xianfa [P.R.C.]} art. 126.

\textsuperscript{307} Basic Law, supra note 38, arts 2, 19.
final court of appeal, final adjudicative power is located within the HKSAR court system. The Privy Council has been replaced by the Court of Final Appeal. In other respects, the court system established under the British has been preserved and judges appointed under British rule may retain their positions.

There is however, a major qualification to this autonomy: the HKSAR courts do not have final power to interpret the Basic Law. This is vested in the Standing Committee of the NPC, in accordance with the PRC constitution. Under the Basic Law, the Standing Committee authorises the HKSAR courts to interpret, in the course of adjudicating cases, those provisions of the Basic Law which are within the limits of HKSAR autonomy. The Basic Law also provides that the courts can determine other provisions in the Basic Law. However, if these concern affairs which are the responsibility of the CPG, or the relationship between the CPG and the HKSAR, the courts must, before making a final non-appealable judgement, seek an opinion from the Standing Committee, and this is binding on them. As the Standing Committee is not a court and its
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interpretations are likely to be based on socialist, not common law concepts, its interpretation power may have a very significant impact on the way the Basic Law operates.\textsuperscript{317}

If the judicial system established under the Basic Law were applied in Taiwan, the island would keep its separate judicial structure and its civil law system would be protected. However, its highest judicial organ, the Council of Grand Justices, would lose its power of conclusive constitutional interpretation.\textsuperscript{318} As discussed above, the Council has made a major contribution to the democratisation process in Taiwan, and has become a significant check on the actions of the other branches of government.\textsuperscript{319} While it might continue to review the validity of legislation within the "Taiwan SAR," the Council would no longer restrain the institutions exercising ultimate legislative and executive authority over Taiwan, which would be the NPC, its Standing Committee and the State Council. Furthermore, a breakdown in the separation of powers currently maintained in Taiwan\textsuperscript{320} would occur, since the final interpretative power would be exercised by an institution also exercising legislative power (the NPC Standing Committee).

\textsuperscript{317} For example, the concept of "judicial independence" in the PRC is quite different from that in common law and civil law systems. In the PRC, it is the courts that are independent, not individual judges, and the courts are subject to supervision of the people's congresses (controlled by the CCP). See Margaret Y.K. Woo, \textit{Adjudication Supervision and Judicial Independence in the PRC}, 29 Am. J. Comp. L. 95 (1991). However, the wording in the PRC Constitution and the Basic Law referring to judicial independence is very similar. If the Basic Law provisions were interpreted by the NPC Standing Committee in light of PRC practice, it would permit a greater degree of interference in judicial decision-making than would be permitted in a common law system. See Denis Chang, \textit{Towards a Jurisprudence of a Third Kind—"One Country Two Systems,"} 20 Case W. Res. J. Int'l. L. 99, 110-111 (1988); See Wesley-Smith, \textit{Constitutional and Administrative Law} supra note 52, at 69; Wang, \textit{The Hong Kong Basic Law}, supra note 164, at 92-95. Fung (commenting on an early draft of the Basic Law) has argued that the process in article 158 is inconsistent with other provisions in the Basic Law preserving the common law system, since under the common law, courts must be able to interpret legislation authoritatively. Fung, supra note 313, at 707-10. He goes on to propose the establishment of a Constitutional Court to deal with the difficult jurisdictional issues arising under the provision.

\textsuperscript{318} See supra note 104 and accompanying text.

\textsuperscript{319} See supra notes 152-161 and accompanying text.

\textsuperscript{320} The Council of Grand Justices has held that the separation of powers is one of the fundamental principles in the ROC Constitution. Interpretation 419.
2. Accountability

The notion of judicial "accountability" is problematic and the discussion here therefore focuses on the selection of judges. Judges of the HKSAR are appointed by the Chief Executive on the recommendation of an independent commission.\textsuperscript{321} Judges may only be removed by the Chief Executive on the recommendation of a tribunal composed of three local judges.\textsuperscript{322} The appointment and removal of judges of the Final Court of Appeal is subject to the approval of the Legislative Council.\textsuperscript{323} This process seems likely to protect the independence of the judiciary, but as the Chief Executive has a central role, the process may be undermined if he or she is tightly controlled by the CPG.

A Taiwan Basic Law might be expected to preserve Taiwan's system of appointing judges, which is a version of the civil law model.\textsuperscript{324} One potential source of controversy is the appointment of the Council of Grand Justices, which follows a procedure different from the other judicial bodies. Under the ROC Constitution, as amended by the Additional Articles, Grand Justices are nominated by the President and confirmed by the National Assembly.\textsuperscript{325} Were the position of President of the ROC to be transformed into "Chief Executive of the Taiwan SAR," subject to the same CPG control as is the case with the Hong Kong Chief Executive, the appointment process could be compromised.

V. CONCLUSION

The PRC's OCTS model may once have been a feasible plan for the peaceful reunification of China, but it has been overtaken by fundamental political and constitutional reform on Taiwan. OCTS was originally designed to deal with the features of a colonial or authoritarian regime. It

\textsuperscript{321} B\textsc{asic} L\textsc{aw}, supra note 38, arts 48(6) & 88. The commission is composed of local judges, persons from the legal profession and eminent persons from other sectors. The Chief Justice of the Court of Final Appeal and the Chief Judge of the Court of the HKSAR must be permanent residents of the HKSAR with no right of abode in any foreign country. \textit{id.} art. 90.

\textsuperscript{322} \textit{id.} art. 89. The tribunal is appointed by the Chief Justice of the Court of Final Appeal. If she or he is to be removed, the Chief Executive must appoint a tribunal of five local judges. Grounds for removal are (1) inability to discharge duties or (2) misbehaviour. \textit{id.}

\textsuperscript{323} \textit{id.} art. 90.


\textsuperscript{325} X\textsc{i}anf\textsc{a} [R.O.C.], art 79; AA, art. 4 (1994).
therefore assumed that the people of Taiwan and Hong Kong had limited autonomy and accountability and that it was possible to negotiate the lawful transfer of control over both areas without reference to the wishes of the majority of those people.

Since Taiwan has democratised and is now in essence a *de facto* independent liberal democracy, OCTS can no longer deliver on its promises. It claims that the Taiwanese will enjoy a "high degree of autonomy," be "masters of their own house" and that their "way of life" will not change. However, in comparison with their current position, where they exercise final control over their own government, the Taiwanese under OCTS would see their autonomy and accountability greatly reduced, and their way of life, at least in a political sense, would radically change.

Given that it cannot succeed even on its own terms, the PRC persistence with OCTS in its present form is futile. It is almost certain to face continuing rejection by the representative organs of government in Taiwan. It could then be implemented only by the PRC rejecting the legitimacy of government in Taiwan (not just that government's claims to statehood) and imposing OCTS through intimidation or force. Since Taiwan, unlike Hong Kong, has a powerful defence force, and may be assisted by other powers, such as the United States, this result would be disastrous.

A preferable solution would be for the PRC to consider alternative models for reunification. This would entail changing the substance of OCTS, although the name could presumably be retained if this were thought necessary to avoid making an obvious policy about-face. There are a wide range of options for reunification between complete independence (which is unacceptable to the PRC) and Hong Kong style autonomy (which cannot succeed in Taiwan), including various forms of federal systems and looser associations.

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326 See GARY KLINTwORTH, NEW TAIWAN, NEW CHINA: TAIWAN'S CHANGING ROLE IN THE ASIA-PACIFIC REGION, Ch. 8 (1995).

327 The tension over the reunification issue is heightened because Taiwan, unlike Hong Kong, is of great strategic significance. Failure to reunify with Taiwan would not only be viewed in Beijing as a threat to its claims to sovereignty, it is also threat to its security. Andrew J. Nathan, China's Goals in the Taiwan Strait, 36 CHINA J. 87 (1996) For a discussion of this issue in the wake of the crisis in the Taiwan Straits during the 1996 Taiwanese Presidential elections, see Forum: The Taiwan Crisis, 36 CHINA J. 87-134 (1996).

328 See, e.g., the different systems discussed in MODELS OF AUTONOMY, supra, note 13. An examination of the competing merits of these in the context of Taiwan is beyond the scope of this article.
On the other hand, there are many obstacles in the way of the PRC altering its existing policy. For any arrangement to be at least partly compatible with Taiwan’s current political system, it would have to involve limiting the PRC central government’s ultimate authority over Taiwan. This is likely to encounter strong resistance in the PRC, not least because it opens the door to demands that such a system extend to other areas of the country, such as Hong Kong and Macau, Tibet and Xinjiang and perhaps all the provinces. Such demands would not only weaken the power of the centralised government, they would raise fears of the disintegration of China as a strong unified state. Any national leader who risked this occurring would be contradicting both contemporary CCP ideology and traditional Confucian-Legalist concepts of central government sovereignty.\(^3\)

Furthermore, even were the CCP prepared to compromise on the issue of the unitary state, this would not necessarily secure reunification with Taiwan. Although the majority of Taiwanese still appear to favour eventual reunification, it is unclear if this is a genuine desire or simply a preference for the status quo—\textit{de facto} independence without the risk of a war a formal declaration of independence would bring.\(^3\)

Nevertheless, if negotiations between the two sides of the Taiwan Straits are to progress, and the PRC’s stated preference for peaceful reunification remain a realistic goal, the substance of ‘OCTS’ (assuming the slogan is retained), will need to be transformed. The model as reflected in the Basic Law of Hong Kong is not at all appropriate for Taiwan.

\(^3\) OCTS had the endorsement of Deng Xiaoping, and any subsequent national leader modifying such a key policy on an issue as sensitive as Taiwan risks undermining his or her authority. The reunification project is invested with near spiritual significance: President Jiang Zemin has described reunification as “the sacred mission and lofty purpose of all Chinese people.” [... \textit{suoyou Zhongguoren de Shensheng Shiming he Chonggai Mubiao}], Jiang Zemin Jianghua, supra note 36, at 1.

\(^3\) Until the mid 1990’s, opinion polls indicated less than 20% of Taiwanese supported independence. \textit{See} opinion polls collected in \textit{Guoli Bianyiguan, Guoji Tongyi Ganling Yu Dalu Zhengce [Kuoli Pienikuan, Kuochia T’ungi Kanling Yul Talu Chengts’e]}(Guidelines on National Reunification and Mainland Policy), Appendix 4 Table 1 (1993). However, recent polls show a surge in the support for independence. A poll conducted by the mass-circulation United Daily News [Lianhe Bao] showed 34% support for independence (up from 24% in 1995) compared to 37% support for reunification, the remainder having no comment. \textit{Reported in Pro-independence Mood Growing in Taiwan, Reuters World Service}, Jan. 30, 1997, \textit{available in} Lexis, ASIAPC Library, CURNWS File.