

SPORTS & ENTERTAINMENT LAW JOURNAL

ARIZONA STATE UNIVERSITY

VOLUME 5

FALL 2015

ISSUE 1

COMMENT

ONE COUNTRY, TWO SYSTEMS: THE INTEGRATION OF HONG KONG INTO CHINA AND ITS IMPACT ON FREEDOM OF EXPRESSION

John Keiter*

TABLE OF CONTENTS

INTRODUCTION	210
I. HISTORICAL BACKGROUND	211
A. ONE COUNTRY, TWO SYSTEMS	211
B. THE YEAR 2047: MERGING THE TWO SYSTEMS.....	213
II. CONTRASTING VIEWS ON MEDIA CENSORSHIP AND FREEDOM OF EXPRESSION	214
III. SURGING FORWARD: CREATING ONE SYSTEM.....	216
CONCLUSION.....	218

INTRODUCTION

While under British rule, the Island of Hong Kong enjoyed a plethora of civil liberties, which have also become prevalent and fundamental in many of today's Western societies.¹ Those freedoms, however, were short lived as the British government's sovereignty over the island expired and China ruled Hong Kong once again.² Surprisingly, however, Mainland China underwent social reform in preparation for the reunification.³

This comment analyzes the contrasting views of the People's Republic of China and Hong Kong's freedom of expression as it concerns film censorship. This comment also explores how the reunification of Hong Kong may influence

* J.D. 2017, Sandra Day O'Connor College of Law, Arizona State University.

¹ See *infra* Section I. Historical Background.

² *Id.*

³ See *infra* Section III. Surging Forward: Creating One System, p.

China's social norms in the future.

I. HISTORICAL BACKGROUND

A. ONE COUNTRY, TWO SYSTEMS

The United Kingdom's interest in the island of Hong Kong primarily grew out of conflicts resulting from British exporters' opium trading operations in the early 1800's.⁴ During that time, British traders established a lucrative opium trade between India and China, which resulted in widespread addiction amongst the Chinese people.⁵ In an attempt to thwart the trading operations, which had caused severe social disruption among the Chinese people, the Chinese government confiscated and destroyed several thousand chests of British merchants' opium.⁶ The resulting tension between the Chinese government and the British merchants eventually led to a British sailor killing a Chinese villager.⁷ The sailor sought asylum with the British government to avoid being tried by the Chinese courts; tensions between the Chinese and British governments ultimately increased until the nations succumbed to war.⁸

British military forces proved far superior to the Chinese military, and the war quickly resulted in peace negotiations in which the Chinese ceded control of Hong Kong to the British.⁹ Complete control over the island was eventually the result of additional military feuds between the British and Chinese governments.¹⁰ The negotiations ended with an agreement which ceded complete control of Hong Kong and other

⁴ Kenneth Pletcher, *Opium Wars*, ENCYCLOPEDIA BRITANNICA (Apr. 17, 2015), <http://www.britannica.com/topic/Opium-Wars>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ William I. Friedman, *China's One Nation, Two-System Paradigm Extends Itself Beyond the Mainland's Borders to the Southern Provincial Government of Hong Kong*, 11 J. TRANSNAT'L L. & POLY 65, 73 (2001).

surrounding islands to the British under a 99-year lease.¹¹

After several years under British control, Hong Kong grew and became “one of the great economic powers in the world.”¹² Under the influence of the British political system, Hong Kong created a democratic system of rule, and established laws and freedoms for its people.¹³

Hong Kong’s laws are clear, predictable, and easily understandable, and therefore not arbitrary, capricious or uncertain, like in China. Moreover, the laws offer transparency and openness . . . through the guarantee of such democratic values as freedom of speech and press In sum, Hong Kong’s “rule of law” has transformed this once “barren” island into a safe haven for the world’s investments¹⁴

The concept of “One Country, Two Systems” was originally formulated as a method to encourage the Taiwanese people to rejoin the ranks of Mainland China¹⁵ after the Chinese Communist Party founded the People’s Republic of China and exiled the nationalist party to Taiwan.¹⁶ The proposal permitted Taiwan to “maintain its political and economic systems,” and did not require Taiwan to adopt the systems of China.¹⁷ Although Taiwan did not accept the model or the proposal of reunification, the Chinese government remained convinced of its viability, and brought the concept to the negotiating tables with the British government in anticipation of the reversion of Hong Kong to the People’s Republic of China.¹⁸

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 67.

¹⁴ *Id.* at 66-67.

¹⁵ George E. Edwards, *Applicability of the “One Country, Two Systems” Hong Kong Model to Taiwan: Will Hong Kong’s Post-Reversion Autonomy, Accountability, and Human Rights Record Discourage Taiwan’s Reunification with the People’s Republic of China?*, 32 NEW ENG. L. REV. 751, 754 (1998).

¹⁶ Brian J. Safran, *A Critical Look at Western Perceptions of China’s Intellectual Property System*, 3 No. 2 U PUERTO RICO BUS. L.J. 135, 138 (2012).

¹⁷ Edwards, *supra* note 15.

¹⁸ *Id.* at 756.

In 1984, the British and Chinese governments signed the Joint Declaration on the Question of Hong Kong (“Joint Declaration”), which provided for the transfer of sovereign powers over Hong Kong from the United Kingdom, to China, on July 1, 1997.¹⁹ Pursuant to the Joint Declaration, the people of Hong Kong continue to enjoy a “high degree of autonomy,” and the “laws previously in force in Hong Kong”²⁰ will remain in effect at least until June 30, 2047, when the provisions of the Joint Declaration expire.²¹ After this point, it is unclear what will happen to the two systems.

B. THE YEAR 2047: MERGING THE TWO SYSTEMS

The constitutional documents concerning Hong Kong’s future omit any indication that the “One Country, Two Systems” policy will end on any specific date.²² Rather, many look to a provision of Hong Kong Basic Law, a companion document to the Joint Declaration, in order to determine the possible date.²³ That relevant provision states: “[t]he socialist system and policies shall not be practised [sic] in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.”²⁴ The exact implications of this provision are unclear. Some parties, looking to statutory interpretation, place strong emphasis on the location of the comma and argue that the term, “[t]he socialist system and policies shall not be practised [sic] in Hong Kong Special Administrative Region,” is an independent clause.²⁵

Whatever the intention may be, there seem to be few answers regarding the original intention of the drafters. Some argue that this is likely due to the fact that many did not believe

¹⁹ *Id.*

²⁰ *Id.*

²¹ Danny Gittings, *What Will Happen to Hong Kong After 2047?*, 42 CAL. W. INT’L L.J. 37, 37 (2011).

²² *Id.* at 47.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 48.

that the separate systems would survive very long after its original implementation in 1997.²⁶ With this in mind, people are left only to speculate about Hong Kong's future. Many believe that after June 30, 2047, most of the liberties that Hong Kong now enjoys, including its independent legislative system, will end, and the people of Hong Kong will be transitioned into the political system currently in force on Mainland China.²⁷ Others speculate that the "One Country, Two Systems" policy will continue to surge forward indefinitely.²⁸

II. CONTRASTING VIEWS ON MEDIA CENSORSHIP AND FREEDOM OF EXPRESSION

Section 23 of the Joint Declaration provides that "Hong Kong residents shall have freedom . . . of the press and publication."²⁹ This section also provides the Hong Kong government with the power to establish its own laws prohibiting acts of treason, secession, and subversion against the Central People's Government of China.³⁰ The degree of authority provided to the Hong Kong government has established what has essentially become an unrestricted media outlet for entertainment and information flow.³¹

Consistent with the "One Nation, Two Systems" policy, China's regulation of media is in stark contrast to that of Hong Kong's policy. China's censorship requirements and regulations are so severe, that its policies have been dubbed "The Great Firewall of China."³² Oddly, the People's Republic of China's Constitution contains promises of freedom of speech,³³ however, the concept of free speech is viewed much differently in China

²⁶ *Id.* at 47.

²⁷ *Id.* at 39.

²⁸ *Id.*

²⁹ Frances H. Foster, *Translating Freedom for Post-1997 Hong Kong*, 76 WASH. U. L.Q. 113, 119 (1998).

³⁰ C. George Kleeman, IV, *The Proposal to Implement Article 23 of the Basic Law in Hong Kong: A Missed Opportunity for Reconciliation and Reunification Between China and Taiwan*, 33 GA. J. INT'L & COMP. L. 705, 709 (2005).

³¹ *Id.*

³² See generally Kristina M. Reed, *From the Great Firewall of China to the Berlin Firewall: The Cost of Content Regulation on Internet Commerce*, 13 TRANSNAT'L LAW. 451 (2000).

³³ *Id.* at 459.

than it is in Western democracies.³⁴ China views the right as merely an instrument for promoting the objectives of the government.³⁵ Under the Chinese communist system, all rights should be sacrificed for the good of the whole.³⁶ The Chinese government uses a wide variety of laws, technology, and human oversight to control information portrayed to the people within its borders, to promote and sustain its societal ideals.³⁷

Given the Hong Kong government's long history of unrestricted media censorship, it is not surprising that the influx of Hollywood cinemas to hit Hong Kong box offices varies significantly from that of Mainland China. In 2014, the Cinemas of Hong Kong enjoyed over 300 box office titles over the course of one year.³⁸ Comparatively, China's cinematic collection tallied in at just over half that number.³⁹ This is due, in large part, to the different policies implemented by the "two systems" in determining what content is appropriate for audiences.

Hong Kong's Policy on Film Censorship allows "adults wide access to films, while protecting young people under the age of 18 from exposure to material which might be harmful to them."⁴⁰ Under this policy, films are submitted to Hong Kong's motion picture authority, which classifies the film under one of three categories: the lowest category, Category I, is suitable for

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Christopher Stevenson, *Breaching the Great Firewall: China's Internet Censorship and the Quest for Freedom of Expression in a Connected World*, 30 B.C. INT'L & COMP. L. REV. 531, 537 (2007).

³⁸ *Hong Kong Yearly Box Office*, BOX OFFICE MOJO, <http://www.boxofficemojo.com/intl/china/yearly/> (last visited Dec. 12, 2015).

³⁹ *China Yearly Box Office*, BOX OFFICE MOJO, <http://www.boxofficemojo.com/intl/china/yearly/?yr=2014&p=.htm> (last visited Dec. 12, 2015).

⁴⁰ *Film Classification and Control of Obscene Articles*, COMMC'N AND CREATIVE INDUS. BRANCH COMMERCE AND ECON. DEV. BUREAU, http://www.cedb.gov.hk/ctb/eng/film/film_1.htm (last visited Dec. 12, 2015).

all ages, and the highest category, Category III, is restricted to persons aged 18 or older.⁴¹ The standards for classifications are based on “community standards,” as determined by “regular surveys of community views.”⁴²

On the other hand, China does not have a film rating system. Rather, the government has tasked the State Administration of Radio, Film and Television (SARFT) to determine which films should be permitted.⁴³ SARFT prohibits or restricts films that, among other things, do not accurately portray the history of its country or other countries, have obscene or vulgar content, and include portrayals of unpunished breaches of morality.⁴⁴ In navigating these subjective policies, many filmmakers have resorted to making films “suitable for all ages” as the surest way to receive SARFT approval.⁴⁵

III. SURGING FORWARD: CREATING ONE SYSTEM

Over the last 30 years, China has already experienced some rather drastic changes in its policies and regulations.⁴⁶ In 1978, China’s Premier Minister, Deng Xiaoping, initiated an “open door” policy to help utilize foreign resources and market mechanisms to accelerate the country’s economic growth.⁴⁷ Further changes arose when China enacted a new constitution in 1982, enabling the country to support different economic and

⁴¹ *Id.*

⁴² *Id.*

⁴³ *SARFT 101: The Rules of the Censorship Game*, DGENERATEFILMS.COM, <http://dgeneratefilms.com/critical-essays/sarft-101-the-rules-of-the-censorship-game> (last visited Dec. 12, 2015).

⁴⁴ *Id.*

⁴⁵ Clifford Coonan, *Chinese Cinemagoers Keen on Film Ratings System*, THE HOLLYWOOD REPORTER (Aug. 26, 2013), <http://www.hollywoodreporter.com/news/chinese-cinemagoers-keen-film-ratings-614450>.

⁴⁶ William I. Friedman, *China’s One Country, Two Systems Paradigm Extends Itself Beyond the Mainland’s Borders to the Southern Provincial Government of Hong Kong*, 11 J. TRANSNAT’L L. & POL’Y 65, 65-66 (2001).

⁴⁷ Todd Kenneth Ramey, *China: Socialism Embraces Capitalism? An Oxymoron for the Turn of the Century: A Study of the Restructuring of the Securities Markets and Banking Industry in the People’s Republic of China in an Effort to Increase Investment Capital*, 20 HOUS. J. INT’L L. 451, 456 (1998).

political systems in preparation for its reunification with Hong Kong.⁴⁸ These changes caused China to gradually shift from its Marxist political and economic system, to a more capitalistic system.⁴⁹ Thus, China is already embracing social reform to enable it to surge its economic growth and establish itself as a world power.

Notwithstanding these changes, the reunification of Hong Kong with China is not without controversy. In the months leading up to the July 1, 1997 reunification, Chinese leaders made disingenuous statements regarding China's intentions of honoring the "One Country, Two Systems" policy.⁵⁰ Evidence of these intentions surfaced in 2003, when nearly half a million protesting Hong Kong residents dismantled Chinese regulation Article 23. Hong Kong residents believed the regulation would be used to severely limit freedom of expression rights, particularly in regards to government criticism.⁵¹ Since that time, China has decided to be more responsive and respectful of the independent law making powers of Hong Kong.⁵² In light of these events, the impact that Hong Kong has had on Chinese policies and ideology is evident, even with its short history under Chinese rule.

With each passing year signifying the impending dissolution of the Joint Declaration, upon which the liberties of Hong Kong citizens may hinge, the need for a new and workable models seems more and more pressing to prepare for the establishment of the hypothetical "One Country, One System." Many models have been proposed to resolve this issue,⁵³ but only few seem plausible. Among these options is "The Balancing Approach."⁵⁴ This model suggests a "balance between individual rights and social order for the good of the

⁴⁸ Edwards, *supra* note 15, at 755.

⁴⁹ Friedman, *supra* note 46, at 65-66.

⁵⁰ Foster, *supra* note 29, at 114.

⁵¹ Kleeman, IV, *supra* note 30, at 706.

⁵² *Id.* at 707.

⁵³ See generally Foster, *supra* note 29.

⁵⁴ Foster, *supra* note 29 at 134.

entire community.”⁵⁵ In essence, it requires China to loosen its grip on censorship, while requiring Hong Kong to surrender its unrestricted approach.⁵⁶ In other words, it’s the proverbial “meeting in the middle” approach between two very different systems.

CONCLUSION

We are left to speculate about the events that will transpire upon the Joint Agreement’s expiration. For the time being, the separate systems are operating smoothly and China appears to respect the independent policies of the Hong Kong legislature. Whatever the future holds for the “One Country, Two Systems” policy, one idea seems evident: in light of the effort that China has made to enter the world spotlight, and considering the civil liberties that have become so engrained amongst the culture and citizens of Hong Kong, when the ball drops and the negotiations cease, the surrender of Hong Kong’s liberties may not come easily.

⁵⁵ *Id.*

⁵⁶ *Id.* at 134-35.