

Can Hong Kong Remain a Liberal Enclave Within China? Analysis of the Hong Kong National Security Law

Cora Chan*

Associate Professor, Faculty of Law, University of Hong Kong

☞ China; Constitutional law; Courts' powers and duties; Hong Kong; Human rights; Liberalism; National security; Statutory interpretation

In 2020, the Chinese government enacted a national security law (NSL) for Hong Kong that has raised doubts over the extent to which Hong Kong can retain its liberal status. The guarantee of that status is a core part of the “one country, two systems” policy stipulated in the Sino-British Joint Declaration and elaborated upon in Hong Kong's post-handover constitutional document, the Basic Law. This article examines the key provisions of the NSL, assesses its likely impact on the institutional and legal frameworks protecting Hong Kong's autonomy and freedoms, and explores what principles the Hong Kong courts—which are common law courts that follow the liberal rule of law tradition—should adopt in adjudicating the NSL, which is a product of China's socialist legal system. It argues that although the NSL undoubtedly weakens the ability of the Basic Law to function as a legal framework for protecting rights and the ability of Hong Kong institutions to check rights encroachments, if the courts properly construe the law, a natural consequence will be that its constricting effects on Hong Kong's autonomy and freedoms can be moderated. Whether Hong Kong's liberal constitutionalist character can be maintained in the NSL era therefore depends, inter alia, on how ready its courts are to apply the legal principles mandated by their constitutional role and how Beijing responds.