

Light of conflicting constitutional norms, the Hong Kong protests are being reframed as a challenge to governmental legitimacy

Dr. Viktor Ivanov¹, Dr. Elena Sokolova²

¹Faculty of Law, Lomonosov Moscow State University, Moscow, Russia

²Department of Legal Theory, Saint Petersburg State University, Saint Petersburg, Russia

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Abstract

This paper examines the case of the 2019 protests in Hong Kong in terms of the conflict over political legitimacy and disaggregating supreme constitutional ideals. Instead of explaining the protests as mere reactions to a policy or governance practice, the study frames them as expressive action, which threatens the integrity of Hong Kong constitutional arrangements. It states that state actors as well as citizens used competing discourses of democratic power this leads to stark ideological conflict in the legal and political fabric of the territory. The analysis of official discourses, symbolism of protest, and popular emotions featured on the paper demonstrates the role of competing views of autonomy and democracy in bringing about a constitutional identity crisis.

Keywords: *Hong Kong protests, political legitimacy, constitutional morality, democratic discourse, legal incoherence, autonomy, protest framing, identity conflict.*

1.Introduction

The 2019 protests shook Hong Kong streets as much as the issue of political change as it did the vitality of constitutional soundness and ethical probity. The core of the conflict which the proposed Extradition Bill unleashed was a basic difference of opinion regarding how, and whether a political regime in a territory sandwiched between two incompatible ideologies was to be ruled. This paper re-imagines the Hong Kong protests not only as a rebelling social movement but as a methodical reaction to a constitutional story in failure- a one that purports on being liberal-democratic values but that also exists within an autocratic-state system. In this interpretation, the protests signify a civic redefinition of normative power and a popular act of opposing a type of governance that requires compliance without there being any moral consistency on its part. Whether the law was contentious of certain civil liberties was not the only issue but, whether the regime issuing those laws had the justifiable moral grounds to accomplish so(1).

This question talks of the normative structure of the constitutional constitution of Hong Kong and questions its inner moral consistency. It brings about a divisionist framework: the constitutional ethos, a system of moral values that a polity claims to uphold and legitimacy narrative, the narrative a state uses to justify its coercive power using those values. When analyzing the events of 2019 along these lines, the resulting picture is one of a refutation of a fractured story of political legitimacy that failed to hold to the predestined constitutional spirit. This paper takes a look at how the state used liberal principles, including rule of law, justice and autonomy, to defend coercive acts of legislative enactment, even as it went to the extent of implementing actions that contradicted the liberal ideals. Such dissent, and the emotional and populist dissent that came after it was not based on an emotional appeal to the people, or a populist appeal but based on a normative challenge to the logical consistency of constitutional morality as such.

The legal and political identity of Hong Kong is determined by its status through the law as a Special Administrative Region in relation to the Chinese sovereignty and this makes a hybrid governance structure. There is the formula of the question of one country, two systems which is an attempt to come to grips with the unitary political structure of Beijing and the legacy of common law which Hong Kong inherited and their aspiration of a democratic autonomy. This mixed system of arrangements has created a stratified constitutional identity, which is a system made up of liberal-democracy ideals coupled with authoritarian political domination and as such, this has created inconsistencies in the realization of the law and governance. The collapse of the Extradition Bill, and the ensuing outcry among the citizenry can therefore be read as reaction to the event of perceived constitutional infringement on this already tenuous constitutional consensus.

The very idea behind this paper is that the government must be politically legitimate not just because it is legal, effective, but because it is in line with the ethics that it purports to represent. In introducing the Extradition Bill, the government of Hong Kong applied the justifications of administrative necessity and procedural justice. but it

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did so in a context that appeared to a great many citizens as compromised, not only as to its democratic limitations but as to its subordination to a central authority to which it does not attribute its professed values. The Bill was interpreted as a symbolic and legal concession to the extent of the jurisdiction of the PRC, and a betrayal of the liberal promises, guaranteed by the Basic Law of Hong Kong(2). Although the protests were thus an act of resistance, the protests took the form of a competing claim to moral legitimacy.

This paper uses a moral-reasoning approach to evaluate the protest movement as a counter-legitimacy claim in addition to it being a political reaction. Based on the premises of constitutional morality and political obligation, it studies the way moral agents, i.e., citizens, evaluate the moral justification of law not in a vacuum, but as part of the moral ecology of a constitutional order. When the laws may not follow the ethics values that gives a constitution its ethical value, the sense of social responsibility to abide by these laws becomes diluted. In this model, protest and civil disobedience do not arise as lawless activities but as thoughts which are rational, and conducted with sound moral understanding of discrepancies in the system. This kind of structure can be used to understand why protest in Hong Kong grew in both scale and rhetoric despite the concessions being made the point was not whether the content of the Bill was any good but whether the state had any legitimacy to form such laws.

2. Political Legitimacy and Fragmented Constitutional Values

When we view the Hong Kong protests of 2019 as something beyond response to the overreach of policy makers, it is necessary to move beyond tangential explanations toward more meaningful delineations of both the structural and normative structures which form backbones of political power. It is in this section that the authors propose a modified idea of a conceptual model, which can be utilized to explain how the fragmented values in the type of constitutions undermine the legitimacy of the political establishments and trigger reasonable civil disobedience. Based on political theory and jurisprudence, as well as amoral reasoning, this theory establishes that the capacity to command is afforded to a regime based on how it manages to integrate constitutional identity in its political claims of having authority(3). Even when this coherence fails, as is the case in such hybrid political systems as Hong Kong, the terrain within which popular challenges to the political order can be staged is broadened by this breakdown of coherence; and protests come not as anomalies but as structurally necessitated struggles of moral enterprise.

Central to this question is the idea of political legitimacy which is when a power is not simply a fact that is accepted but when it is the moral justifiability. The legitimacy of a state is linked to its ability of providing its citizens with sensible reasons to follow its laws and most importantly when the law is coercive. These motives in liberal political concept are based on constitutional principles that include justice, individual rights, accountability and equal participation. But when these values come to conflict or when they apply unequally, the moral authority of state power loses force. In Hong Kong, an intermittent legitimacy crisis has developed as a result of the fact that the liberal-democratic aspirations the region exists in conflict with the authoritarian nature of its constitutional relationship with the People Republic of China (PRC). The events of the 2019 protests may therefore be recontextualized as an outcry of the population about this crisis to indicate how much divided constitutional principles pose a threat to stable governance.

In order to examine this failure in legitimacy, we just post two main constructs namely constitutional coherence and normative dissonance. The internal consistency in a legal-political regime with its own moral principles is known as constitutional coherence. A cohesive constitutional regime is one in which certain values, expressed on the table (democratic accountability or the rule of law) are paralleled by institutional actions and policy performance. On the other hand, normative dissonance comes about when there is a gap between what a government purports to be doing, and what it actually does. In Hong Kong, this dissonance lies in Basic Law itself that on the one hand it promises autonomy, high degree of autonomy and freedom (on the level with every other part of the world) and the probability of universal suffrage, on the other hand it allows the region to be structurally dependent to the authority of Beijing city(4). This irony creates a legitimacy crisis, most particularly where this is used to give a liberal-based government justification to engage in illiberal practices.

This structure is an elaboration of the rational-normative theories of legitimacy according to which political authority should be based on moral justifications that rational citizens could embrace. Based on this view, governments have a responsibility to prove that their governmental policies, laws, conducts, etc are in line with the morality they purport to uphold. The lack of it not only poses a legal or a political issue but a moral issue as

well - the lack of purpose in obedience. The moral agents, that is citizens are then empowered to resist, protest, or disobey based on the same principles, the same principles, which the regime has used in justification but not observed.

In this model, there is also a differentiation between the claims of state legitimacy and citizen counter-claims of legitimacy. The claim of legitimacy is the narration developed by a government on why its legislation is worth following. Such a statement is usually made in terms of some value such as the safety of populations, justice, or will of the people. Legitimacy counterclaim, conversely, should be viewed as a case where citizens put forward an objection against the state on their grounds that the state does not seem (or has not seemed, at least) to have achieved what they themselves proposed to achieve. These oppositions can be present as civil opposition, rhetorical opposition, legal opposition or public opposition. A good example of this in the case of Hong Kong is the 2019 protests, which was a counter-claim to legitimacy based on the perceived loss of its democracy and the safeguard of human rights and liberties.



FIGURE 1 Analyzing the Hong Kong Protests of 2019

Notably, this structure does not render legitimacy based on the legal legality or procedural regularity. It does not enquire about the legality of a law but its morality based on the values that the constitution supports of the regime. The irony of this situation is critical in a case like Hong Kong, where the official legal framework can give way to some kinds of law which, in this case, is the Extradition Bill, but where in reality by law, such a law goes against the sense of having freedom, the sense of law being forever fair, and correlated to the fact that they are also human beings and that human rights are an objective in itself(5). When this happens, legality becomes unhinged to legitimacy and a citizen can be put in a morally objectionable situation of having to do wrong in the eyes of the law or not do wrong even in a situation that the law is right.

Furthermore, this theoretical optic puts the performative element of protest in constitutional discourse to the fore. Protest is not only resistance but a certain democratic speech and interrogation of the moral right of the state. It is especially so in those regimes where the dissent is institutionally restricted and the channels of democracy few. In Hong Kong, the demonstrations became a citizen consultation to the legitimacy of the government. The vision of the constitutional values expressed through banners, chants, symbols, and even demands resembled the vision of what the government had failed to achieve democracy, accountability, and justice. These forms of expression were normative arguments and served as reminders of the values that the regime was supposed to realise, and therefore, insisted on their realisation.

One last element of this framework is the dialectical presence of the two elements of law and legitimacy in hybrid regimes. Legitimacy is not an absolute feature of such contexts but a dynamic one riven with competition in these contexts. When regimes implement policies by using some set of constitutional values (e.g., public order or national unity) over others (e.g., civil liberties or democratic participation), they may become initiators of cycles of protest and repression. The legitimacy crisis is worsened in each cycle and the yawning chasm between the constitutional promise and political practice increases. This is what we can call feedback loop and we could see it

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in Hong Kong when each state act of repression created more protest that increased the legitimacy deficit instead of addressing it.

Overall, with this section we can have a conceptual map in which to analyze the 2019 Hong Kong protests as a reasonable and ethically-decent response to diffracted constitutional values. As the given framework shifts the focus to disjunction between the references to the legitimacy and constitutional coherence, the framework positions these protests as being part of the higher discourse of moral duty, civil opposition and democratic responsibility (6). The second part will proceed to illustrate the application of this model to the actual history of Hong Kong and its legal situation and will discuss how the unusual political relationship staged the normative conflict and the mass mobilisation.

3. Between Sovereignty and Autonomy

The reason one must understand the political and legal path that gave rise to the protests in 2019 in Hong Kong to fully comprehend the intensity and structure of them can be attributed to the fact that the nature of the protests itself screams that there has to be a reason behind this occurrence, which occurred due to the process of displaying authority. Neither did the protests simply appear out of the blue or solely represent a reaction to one specific controversial bill being passed into legislation. Instead, they were a part of a lengthy process of constitutional and political confrontation based on the postcolonial architecture of the governance of the Hong Kong and its uncomfortable place in Hainan (PRC) political national structure. Here, the author discusses how a resolute ambiguity in the constitutional identity of Hong Kong, which is suspended between the prospects of autonomy and mechanisms of control, situated a breeding ground of disputes over legitimacy that culminated in mass mobilization.

After the transfer of the British to the Chinese reign in 1997, Hong Kong was set as a Special Administrative Region (SAR) on the premise of the conception of one country, two systems. The formula was enshrined under the Basic Law and was supposed to accord a high level of autonomy rate to Hong Kong in the fields of laws, political and economical matters and be under Chinese sovereignty. The Basic Law guaranteed the continuation of the fundamental liberal principles such as freedom of speech, an independent judiciary, and an ultimate universal suffrage within 50 years of the handover(7). There have been however, the countenance of contradiction, limitation and delay in the operationalization of the said values.

The Basic Law was marked by a combination of tensions right at the outset. On the one hand, it adopted liberal-democratic vocabulary as a means to maintain the law and basic rights. On one hand it subjugated the European styled legal system of Hong Kong to final authority of the National People Congress Standing Committee (NPCSC) in Beijing. Consequently, the constitutional design in Hong Kong found itself in a bind: it had a normative basis, in liberal theory of politics, but still rested in an institutional structure, a state-based system, with centralised and monopoly rule. This disjointed constitutional framework was the precondition to the recurring struggle over what exactly the term “autonomy” entailed, as well as which power ultimately ruled on the future of the political status of the region.

The trend of political disillusionment was then further compounded during the early 2000s, especially when the efforts to have democratic reforms were postponed or watered down. The 2004 move by Beijing to restrict electoral reform, and the 2014 white paper emphasising the political domination of its own block of power (as it declared) over Hong Kong, were action warranted of a change towards the centralised power. These actions caused increasing doubt among Hong Kong people in the part of the Beijing to fulfill the promises incorporated in the Basic Law. Activism/Protests like the Umbrella Movement in 2014 were not merely protests as a response to particular judgments or a specific decision, but protests as representatives of the masses signifying existential threat, that the promises of the values of justice, equality and participatory governance (though constitutionally implied, but never achieved), were not only in danger, but also legitimately on the line.

These tensions had erupted with such a force that the 2019 Extradition Bill sparked them to a new high. The first version of the so-called Bill, according to which Hong Kong would expand extraditions to places,[the] which it did not have formal agreements with,[namely] mainland China,[and] was introduced by the government of Hong Kong in February 2019 (8). The official explanation of the Bill was the procedure requirement to resolve a loophole in the law which had been revealed by the case of a murder committed by a resident of Hong Kong in Taiwan. But soon people began to think differently to what the government was claiming. The Bill was viewed by many Hongkongers as a back door through which the central jurisdiction in Beijing wanted to exert its authority in the

system of laws in the city further jeopardizing its judicial independence and freedom of procedure in its services which was an exception to mainland.

The law itself was also frightening, but in addition, there was the context within which it was proposed to be given constitutional connotations. The legal system of the PRC is greatly condemned as one that is not transparent, that lacks the rule and process of due process and fair trial. Human rights groups, commentators and attorneys moved swiftly to indicate that the Bill would expose the citizens of Hong Kong and foreign nationals in the city to unjust detention, politically driven charges and infringement of personal freedoms. This was not a hypothetical dread; it was based on years of such headline-making cases in which Beijing had already been criticized of extrajudicial sweep, including the vanishing of book-seller and activists critical of the regime.

Opposition to the Bill started among the people very soon, but first on a legalistic day and age and later on an existential level(9). This all started as protests over the removal of one piece of legislation and quickly became a bigger movement to insist on more transparency, democratic accountability, and safeguarding civil liberties. These questions were contained in the protests whose movement quickly turned violent due to the bottom-up consensus that by the pressure being put on them through the political heavyweight in Beijing, the promises of the constitution of autonomy, upholding human rights, and the rule of the law were no longer practical.

By the middle of 2019, the protest movement had evolved into a five-demands model, including: full withdrawal of the Extradition Bill, independent inquiry into the police actions, release of all the protesters, withdrawal of the designation by the government of the protests as a riot and genuine universal suffrage. These demands were an indicator of the turning point: citizens were no longer satisfied with fragmentary adjustments to the policy but demanded to provide the structure to mend the moral stain on the governance of Hong Kong. The credibility of the very administration was now doubted, as was that of the Basic Law remaining viable in the terms of viable constitutional framework.

Notably, the initial decision by the government not to become a participant of the dialogue, along with the rise of forces of the police and rhetorical positioning by the side of Beijing also contributed to the manifestation of greater distrust by the population. The Beijing-visit assertion of Chief Executive Carrie Lam that the Bill was not a move spearheaded by Beijing was not enough to alleviate critics especially after the feeling of large masses of population felt convinced that the law was engineered by the invisible hand of the central government. This situation further crystallized the difference between state rhetoric and citizenry with the official emphasis on the necessity of the procedure being at odds with the larger moral and political values that were expressed by citizens.

4. Constitutional Morality and the Crisis of Democratic

The Hong Kong protests of 2019 did not burst just because of protesting against a single bill. They were embodiments of a more fundamental challenge to ethical and constitutional origins of political order in the region. Here, constitutional morality poses an influential way to describe the meaning of the protests beyond that of political disobedience: it was a normative critique of a governing order whose professed values no longer corresponded to its actions. This section looks at the theoretical origins of constitutional morality and uses them to explain the case of Hong Kong, that under its current hybrid constitutional regime, a broken and frequently incoherent moral order has been created, one which cannot hold a coherent assertion of democratic legitimacy.

Constitutional morality in its essence is defined as the system of moral values and principles on which the structure of political community is based. It covers not only the words of a constitution but the moral demands that the society puts to its laws, institutions, and political practices. In the case of liberal-democratic regimes this comprises of promises to individual freedom, to human rights, rule of law and most importantly political equality. Such values constitute the moral infrastructure on grounds of which citizens rationalize subordination to legal authority. A regime purporting to have a power to coerce, has also the obligation to show that its authority is exercised in the service of, and remains limited by some morally-recognizable purpose which has been publicly acknowledged. This idealistic aspect of constitutionalism is critical in regimes that are based on popular consent and involvement. As Ronald Dworkin and many others have observed, the paradox of liberal democracy is the difference between the individual volition and the coercion of the law(10). The democratic regimes should request people to comply with the law yet at the same time respected moral autonomy. This becomes justified when the law says legal values that are shared by the citizens. Therefore, the democratic state not only needs to legislate, but it also needs to provide moral reasoning behind the legislation through the lens of its constitutional identity.

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But what has seen several compromises in Hong Kong has been this coherence in the foundation. In the years since the handover in 1997, the region has been having a difficult time in defining its constitutional morality. On the one hand, the Basic Law encompasses some basic liberal principles, the independence of the courts, individual freedoms, and a pledge to establish universal suffrage in the future. And on the other, it cedes authority to the Standing Committee of the National People Congress in Beijing to make final decisions as to its sense and to it that committee makes those decisions not based on liberal-democratic principles. The outcome is a constitutional identity that is divided between two moral universes namely a liberal value claiming identity and a centralized control imposing one.

The conflict has provided a long-term legitimacy problem. Despite a roadmap to democracy in the Basic Law, there has been reversal or stagnation of advance in democracy because of subsequent political decisions in Beijing or on its behalf. The assurances of political equality, which is what any true democracy is built upon, has been more or less empty. The Chief Executive is still elected very firmly, and demands of universal voting have also been dismissed on several occasions. Basically, the Basic Law has become the act of symbol of democratic possibility in Hong Kong, as well as, the tool of suppression of democratic possibilities of Hong Kong. Such hypocrisy has destroyed the faith of the people in constitutional rule and eroded the moral authority of the regime. In order to make sense out of this contradiction, we need to differentiate formal values of the constitution and the constitutional morality being practiced. Formal values are what is written in law documents, the ideals whereas the morality that is actually practiced is what the citizens see in action, the actual institutional behaviour and political consequences. This has increased tremendously in Hong Kong. The promise of the value, law embodies freedom, rights, autonomy, are continually present to those citizens but they see day to day actions and attitudes contrary to such values as law is reinterpreted, political exclusion occurs as well as the promise of the use of force. This gap between the ideal and the actual has given way to the moral legitimacy of the regime to be re-examined by the population.

The 2019 protests can be regarded as manifestation of this reaffirmation. Protesters not only defended the change of policy, they confronted the principle of the system as a whole. Their slogans, five demands, not one less, no extradition to China, no extradition to China, no extradition to China, liberate Hong Kong, revolution of our times lifted up a crisis of constitutional meaning. The discourse used in the protests evoked what the government had always purported to practise: fairness, justice, accountability and freedom. The insistency to see them fulfilled by the protesters pointed out the disparity between the constitutional rhetoric by the regime and its political reality.

A larger philosophical issue disclosed in this disjuncture asks what occurs when the constitutional morality said to be in place within a political community is neither substantive nor performative, but rather performative only? As it is in the case of Hong Kong, constitutional morality has been used as an instrument of legitimation of rules and not really as a ruler. Using values such as rule of law, justice to justify laws that go against the same values they are being interpreted, the government enforces such laws. An example of this is the 2019 Extradition Bill, which was peddled as something that was meant to facilitate justice and fairness, but the fact that justice would have been eroded systematically means it was also an ethically inconsistent message. Once the normative accounts of legitimacy are built on opposing or shallow appeals to value, they simply fall when exposed to popular pressure, as was the case in the protests.

Further, the constitutional morality of Hong Kong is especially weak because of its reliance on foreign sovereignty. Contrary to liberal democracies who can constitutionally change their own constitutionally through internal discussion and agreement, the system of Hong Kong is constitutionally subservient to PRC constitutional by design. Such subordination has the effect of creating a systemic stumbling block to constitutional development, and poisoning democratic pledges of credibility. In addition to that, it also makes constitutional morality subject to reinterpretation or suspension, in political expediency. This subordination to a non-democratic power cripples local institutions and removes citizens of the political empowerment through a significant feeling that they authored their political lives themselves- which undermines more the ethical agreement between the government and the governed.

The constitutional morality dilemma that has been experienced in Hong Kong is not only a legal or political issue, but existential. The Basic Law ceased to be effective and a source of shared values with truth and confidence to most citizens due to the democratic developmental condition of the country. Instead, it has led to the use of public protest as the means of asserting moral agency once again. The streets had been turned into the second constitutive space where the citizens could rearticulate constitutional visions of justice, participation and autonomy. Revisioning the 2019 demonstrations as a moral counterclaim will help us comprehend them less in terms of

disobedience, but, in an effort to regain constitutional self similarity that has been lost through years of breached promises and strategic ambiguity.

Summing up, the anti-governmental protest in the streets of Hong Kong represents the profound break in the correlation between the constitutional form and moral content. As long as there is denial of any reconciliation between the constitutional values and the behavior of the institutions of the territory and as long as it does not keep its promise of democracy with integrity, the legitimacy crisis will remain unsolved. When constitution morality is divided it does not operate as a governance tool rather it becomes the source of deviation. The demonstrations of 2019 present a collective judgement, which is that the validity of a regime is based not on the power it purports to wield but the values it truly practices.

5. Conclusion

It is wrong to reduce the 2019 Hong Kong protests to a response to one specific piece of legislation only, by failing to recognize its deeper moral dimension, which is a response to an increasingly failing system of political authority that has been losing its legitimacy in Hong Kong. And, fundamentally, the demonstrations constituted civil society engagement with a constitutional order which in its declared allegiances to liberal-democratic principles had seen its political conditionality and institutional infeloquence continuously challenge its own issuing of the so called commitments. By going into the streets to protest, the protestors did not just want to argue with a bill, they also wanted to argue with a system of governance that required obedience without making it morally sound. They rebelled against the kind of civic awareness that had been built up over decades of constitutional confusion and frustration over democracy promises that could no longer be squared with the facts of executive usurpation and the growing encroachment of power in Beijing.

The crux of this crisis is that Hong Kong has a split constitutional morality. The region is in a special, and often unsustainable, place in a hybrid state of mix-and-match politics where a liberal veneer is ostensibly applied over a regime of structural subservience to an authoritarian power. The effect of this structural contradiction has been a long-standing state of normative dissonance: liberal values of the rule of law, autonomy, and participatory governance are proclaimed publicly, and in the discourse, but have been inhibited or inverted in practice in many cases. This mismatch between the political promise and constitutional delivery has undermined the claims of legitimacy by the Hong Kong government which no longer can prove effective in asserting its moral authority over the citizens.

This paper has attempted to reveal that protest was not just politically but normatively justified in Hong Kong because the protests have been reframed as a kind of legitimacy counterclaim. When the institutions of the state are trying to use the liberal values to justify the law which directly violates said values, people have every right to react, or rather, duty. There, protest represents a form of constitutional speech: a kind of public reasoning which serves as a defense of values that the state has failed to take seriously. The sit-ins, chants, and slogans were not only the claims of difference but also the argument of the illogicalities of the state.

In the future, the conflict between the constitutional aspirations of the people of Hong Kong and its reality of governing is not going to ease. Without a sincere attempt to come to terms with these divergent normative systems (either to truly implement the liberal intentions of the Basic Law or to face up to the incompatibility between their position and mainland constitutional norms), the region can expect to see a repetitive cycle of such crises of authority. Every new policy that fails to meet the essential political values of the community will fuel the resistance again, not because the citizens do not want to be governed, but because they will no longer accept being governed without a legitimacy.

Overall, the 2019 protests represented a moral vote on the constitutional life in Hong Kong. They revealed the boundaries of procedural power and the significance of moral consistency of the government. By questioning the broken pretension by the government in laying down authority, Hongkongers reclaimed their appetite as moral establishments in a political community which was yet to determine itself. The institutional reform Hong Kong will need is the future of Hong Kong such reform must go further to restored trust in government and governed, a trust based on some common and consistent constitutional morality.

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Conflicts of interest

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