

# A Securitized “One Country, Two Systems”? Law as Social Control in Macau

Ieong Meng U

University of Macau

Wu Xiangning

University of Macau

Forthcoming in *Asian Survey*

## Abstract

This paper examines how Macau, with a different political and legal system under the “One Country, Two Systems” principle, fits into China’s securitization and what impact that has on its local governance. We argue that Macau’s legal system has gradually transformed into a means of social control in recent years. Through case files related to the Assembly and Demonstration Law drawn from the Court of Final Appeal, we demonstrate that although Macau is unlike Hong Kong, where dissidents are subject to severe repression, Beijing’s emphasis on national security has weakened the checks-and-balances-function in Macau’s legal system and substantially narrowed the scope of the freedom of speech, which is guaranteed and protected by the Basic Law.

**Keywords:** One country, two systems; national security; freedom of speech; Macau; Hong Kong

## Introduction

While Macau and Hong Kong are both governed under the “One Country, Two Systems” (OCTS) principle, these two Special Administrative Regions (SAR) have been evaluated very differently by Beijing since their return to China more than 20 years ago. For example, in his official trip in 2017, former Chinese Communist Party (CCP) Standing Committee member Zhang Dejiang openly praised Macau as the model in defending national security by finalizing the legislation on Basic Law Article 23.<sup>1</sup> In contrast, when Leung Chun-ying presented his annual report on Beijing in 2016, General Secretary Xi Jinping stated that since “‘OCTS’ is in line with the interests of the state and the people of Hong Kong, [it is] in accordance with the will of the whole nation, the central government, and the Hong Kong SAR government, and Hong Kong society should have faith to guard and defend the baseline in order to ensure the implementation of ‘OCTS’ in Hong Kong in line with the Basic Law”.<sup>2</sup> This is the reason why in the Anti-Extradition Law Protest in 2019, the Xinhua News Agency and

---

<sup>1</sup> Dongwang “Aomen iaoxi: Zhang Dejiang zan aomen shuaiianluoshi jibenfa 23 tiao” [Report from Macau: Zhang Dejiang praised Macau is pioneer in the legislation of Basic Law Article], On.cc, Accessed January 26, 2021. [https://hk.on.cc/hk/bkn/cnt/news/20170509/bkn-20170509115347150-0509\\_00822\\_001.html](https://hk.on.cc/hk/bkn/cnt/news/20170509/bkn-20170509115347150-0509_00822_001.html)

<sup>2</sup> Dagongwang “Xi Jinping jinnian shegang jianghua zhongyaoneirong” [Main Points in Xi Jinping’s Recent Speeches Related to Hong Kong], Takungpao.com, Accessed January 26, 2021. <http://www.takungpao.com.hk/hongkong/text/2017/0411/73563.html>

*People's Daily* both regarded the protest as a serious threat to national security for touching the three “baselines” of the OCTS principle: (1) threatening national sovereignty, (2) challenging the central government and the Basic Law of Hong Kong, and (3) using Hong Kong for the purpose of subversion.<sup>3</sup>

As regime stability has always been a top priority for the CCP (Nathan 2003), the above statements reflected the central government’s changing perception of securitization with respect to Macau and Hong Kong. While the growing confrontation between Beijing and Hong Kong has attracted much attention from the media and academia, how the central national security scheme was implemented in the case of Macau, which has a different political system than China, has received little attention. We argue that unlike the case of Hong Kong, where the application of the *national security law* (NSL) has resulted in the severe repression of dissidents, the NSL has never been practically applied in Macau. Beijing’s emphasis on national security has nevertheless weakened the checks-and-balances function in Macau’s legal system, gradually transforming the law into a means of social control. As a result, the scope of

---

<sup>3</sup> Xinhuanet “Xinhuashiping: ‘yiguoliangzhi’ yuanzedixian bukedongyao” [Comments from Xinhua: Violation of the Principle of “One Country, Two Systems” is intolerable], Xinhuanet.com, Accessed on November 19, 2020. [http://www.xinhuanet.com/gangao/2019-08/30/c\\_1124939086.htm](http://www.xinhuanet.com/gangao/2019-08/30/c_1124939086.htm); Renminwang “Renminribao pinglunyuan: juebuyunxu renheren tiaozhan yiguoliangzhi yuanzedixian,” [Comments from People’s Daily: The principle of “One Country, Two Systems” is unchallengeable], People.cn, Accessed on November 19, 2020. <http://opinion.people.com.cn/n1/2019/1118/c1003-31459262.html>

freedom of speech, which is guaranteed and protected by the Basic Law, has substantially narrowed in recent years.

This paper is organized as follows. We first discuss how China's securitization related to Macau and some essential differences in the NSL, which can be perceived as the hallmark of national security in the two SARs. By illustrating that Macau's version of the NSL is significantly more moderate than that of Hong Kong, we show that the securitization of Macau is achieved by transforming its legal system into preemptive social control tools instead of utilizing the direct repression implied by the NSL. We then theorize the above process through the perspective of the "authoritarian rule of law" and provide empirical evidence from recent local legislation and case files before reaching the conclusion.

### **China's Securitization and Macau**

"Securitization is a rule-governed practice, the success of which does not necessarily depend on the existence of a real threat, but on the discursive ability to endow a development with such a specific complexion effectively" (Balzacq 2005, 179); in such practices, a state representative moves a particular development into a specific area and thereby claims a special right to use whatever means necessary to defend it (Waever 1995). As Nathan and Scobell (2012, 3) argued, Chinese security policy is a

reflection of China's fundamental weakness and defensiveness, not according to the current level of security risks the country faces but the worst risks that could evolve under certain circumstances. Describing securitization as a process of construction (McDonald 2008), the perception of the central leader in the domestic and international order played a decisive role in China's securitization; ideational construction therefore should be recognized as the primary cause of China's national securitization process, which intentionally strengthens and motivates China's assertiveness.

Xi Jinping has repeatedly mentioned the relationship between national security and regime stability in different scenarios. For example, in his speech at the first meeting of the Central National Security Committee in 2014, he emphasized that national security is crucial, as it guarantees the development of socialism with Chinese characteristics. He then proposed the idea of "comprehensive national security" (CNS) and specified 11 types of "threats" it would address<sup>4</sup>; this was not only a form of conceptualization but also a form of constructivist action that resulted in concrete national security policies by practitioners (You 2016). Later, in the NSL, enacted in 2015, Article 2 stipulated that national security means "a status in which the regime, sovereignty, unity, territorial integrity, welfare of the people, sustainable economic and

---

<sup>4</sup> The types of threats specified were political security, territorial security, military security, economic security, cultural security, social security, scientific-technological security, information security, ecological security, resource security and nuclear security.

social development, and other major interests of the state are relatively not faced with any dangers or internal or external threats and maintain a sustained security status”<sup>5</sup>; this definition implies a more comprehensive combination of traditional and nontraditional securities and legitimates a wide range of means from conservative to preemptive for the purpose of regime stability. The law and the concept of CNS reflect the perception of “security” that has been systematically reconceptualized since Xi’s era. Through intentionally constructing the urgency of threats, the implementation of securitization is an action to defend national interests. At a party study session at the beginning of 2019, Xi made the above statement clearer: “Take all the necessary precautionary steps, and be vigilant about any risks that could jeopardize China’s stability and reforms”.<sup>6</sup> Recently, in a politburo meeting held on December 11, 2020, he even highlighted the primary position of political security in CNS as substantially equaling national security with regime stability.<sup>7</sup>

---

<sup>5</sup> Ministry of National Defense “National Security Law”, Accessed November 20, 2020. [http://www.mod.gov.cn/big5/regulatory/2016-02/19/content\\_4621258\\_2.htm](http://www.mod.gov.cn/big5/regulatory/2016-02/19/content_4621258_2.htm)

<sup>6</sup> Mai, Jun “Be Vigilant about Threats to China’s Stability and Reforms, Xi Jinping Tells Top Cadres”, *South China Morning Post*, Accessed January 27, 2021. <https://www.scmp.com/news/china/politics/article/2183067/be-vigilant-about-threats-chinas-stability-and-reforms-xi>

<sup>7</sup> Xinhua News Agency “Xi Jinping zai zhongyangzhengzhiju diershiliuci jitixuexi shi qiangtiao jianchixitongsiwei goujian daanquangeju weijianshe shehuizhuyixiandaihuaguojia tigong jianqiangbaozhang”[Xi Jinping Emphasized National Security is the Backbone of a Socialism Modern State in the 26<sup>th</sup> Politburo Learning Session], Ministry of National Defense, Accessed January 26, 2021. [http://www.mod.gov.cn/big5/leaders/2020-12/12/content\\_4875340.htm](http://www.mod.gov.cn/big5/leaders/2020-12/12/content_4875340.htm)

Therefore, Beijing’s interpretation of the OCTS principle inevitably reflects the dynamics of China’s securitization. Although the 18th CCP National Congress report in 2012 mentioned that the CCP would “adhere to the one-China principle and respect the differences of the two systems, both upholding the power of the central government and ensuring a high degree of autonomy in the SARs”, for the first time, the report stated the inseparable “integrity” of the two regions and highlighted that “the underlying goal of the principles and policies adopted by the central government concerning Hong Kong and Macau is to uphold China’s sovereignty, security and development interests and maintain the long-term prosperity and stability of the two regions”.<sup>8</sup> The report particularly emphasized “guarding against and forestalling external intervention in the affairs of Hong Kong and Macau”. Through the CNS plan, the connection of Macau and Hong Kong to national security was established. A similar expression therefore later appeared in Xi’s speeches on the anniversary of the handover of Macau and Hong Kong in 2015 and 2017, respectively—if the OCTS principle was not “correctly” applied, this would not only undermine the prosperity of the two SARs but also pose dangers to national sovereignty and security; he re-emphasized these ideas in his speeches on the 40<sup>th</sup> anniversary of China’s reform and opening in 2018.<sup>9</sup> All of

---

<sup>8</sup> Xinhua News Agency “Report of Hu Jintao to the 18<sup>th</sup> CPC National Congress”, Accessed November 20, 2020. [http://www.china.org.cn/china/18th\\_cpc\\_congress/2012-11/16/content\\_27137540\\_10.htm](http://www.china.org.cn/china/18th_cpc_congress/2012-11/16/content_27137540_10.htm)

<sup>9</sup> Dongwang “Aomen iaoxi: Zhang Dejiang zan aomen shuaiianluoshi jibenfa 23 tiao” [Report from

these assertions clearly state the role and responsibilities of Macau in the overall landscape of China's national securitization. However, in sharp contrast with protests in Hong Kong, pursuing political reform is seldom the purpose of most protests in Macau (Jeong 2017, 2019), not to mention direct confrontation with the central government. The scenarios presented in Beijing's statements are not facts but concerns about maintaining regime stability in Macau, which have transformed the local legal system into an "authoritarian rule of law".

### **The Basic Law and the NSL under China's Securitization**

The Basic Law provides the legal foundation of Macau's autonomy. According to Article 2, "[t]he National People's Congress authorizes the Macau SAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law", and Article 5 stipulates that "the socialist system and policies shall not be

---

Macau: Zhang Dejiang praised Macau is pioneer in the legislation of Basic Law Article], On.cc, Accessed January 26, 2021. [https://hk.on.cc/hk/bkn/cnt/news/20170509/bkn-20170509115347150-0509\\_00822\\_001.html](https://hk.on.cc/hk/bkn/cnt/news/20170509/bkn-20170509115347150-0509_00822_001.html); Dagongwang "Xi Jinping jinnian shegang jianghua zhongyaoneirong" [Main Points in Xi Jinping's Recent Speeches Related to Hong Kong], Takungpao.com, Accessed January 26, 2021. <http://www.takungpao.com.hk/hongkong/text/2017/0411/73563.html>; Xinhua News Agency "Xi Jinping: zai zhugai gaigeakifang sishi zhouniandahui shang de jianghua"[Xi Jinping: Speech on the 40<sup>th</sup> Anniversary of Reform and Opening], Xinhuanet.com, Accessed January 26, 2021. [http://www.xinhuanet.com/politics/leaders/2018-12/18/c\\_1123872025.htm](http://www.xinhuanet.com/politics/leaders/2018-12/18/c_1123872025.htm)



practiced in the Macau SAR, and the previous capitalist system and way of life shall remain unchanged for 50 years”.<sup>10</sup> However, in a meeting with members of the Basic Law Drafting Committee in 1984, Deng Xiaoping stated the following: “There is one problem that must be clarified: Don’t take Hong Kong people governing Hong Kong for granted; if the central government plays no role, then everything will be fine. It is infeasible, and such an idea is impractical. It is true that the central government will not intervene in Hong Kong affairs; it is not necessary. Nevertheless, is it possible that something threatening to national interests is occurring in Hong Kong? Then, should Beijing intervene? If the central government abandons all its power, there will be chaos that undermines Hong Kong’s own interests. Therefore, the central government maintains some power; there is no harm to Hong Kong...”.<sup>11</sup> Thus, from Beijing’s perspective, the autonomy of Macau and Hong Kong is conditional rather than canonical, and the Basic Law can be reinterpreted according to the needs of national security (or said national interests).

---

<sup>10</sup> Government Printing Bureau “The Basic Law of Macau,” Accessed on November 19, 2020.

[https://bo.io.gov.mo/bo/i/1999/leibasica/index\\_cn.asp](https://bo.io.gov.mo/bo/i/1999/leibasica/index_cn.asp)

<sup>11</sup> Renminwang “Huijian xianggang tebie xingzhengqu jibenfa qicao weiyuanhui weiyuan shi de jianghua,” [Speech on the Meeting with Members of the Draft Basic Law Committee of Hong Kong], People.cn, Accessed on November 19, 2020. <http://zg.people.com.cn/BIG5/33839/34943/34944/34947/2617694.html>

For Beijing, as mentioned in the introduction, Macau is the “model” of the OCTS principle, especially regarding the issue of national security, while Hong Kong has repeatedly challenged the Basic Law and the central government, which is intolerable because according to the CNS scheme, such activities are equal to threats to regime stability. The NSL is the most symbolic policy in defending national security, and some crucial differences in the Macau version and Hong Kong version of the NSL reflect Beijing’s perception of the potential threats the two SARs may pose to the regime. First, the Hong Kong version is significantly more detailed and complete (66 articles) than its Macau counterpart (15 articles).<sup>12</sup> For example, section one and section two of the Hong Kong version stipulate the “General Principle” and the “Duties and the Government Bodies of the Hong Kong SAR for Safeguarding National Security”, respectively; the same articles do not appear in the Macau version. Second, although the offenses listed in the NSL are generally similar in the Macau and Hong Kong versions, the scope of application is much wider in the latter. Article 36 stipulates as follows: “This Law shall apply to offenses under this Law which are committed in the Hong Kong SAR by any person. An offense shall be deemed to have been committed

---

<sup>12</sup> For the full version of the NSL in Macau and Hong Kong, see [https://bo.io.gov.mo/bo/i/2009/09/lei02\\_cn.asp](https://bo.io.gov.mo/bo/i/2009/09/lei02_cn.asp) and <https://www.scmp.com/news/hong-kong/politics/article/3091595/hong-kong-national-security-law-read-full-text>, Accessed on November 19, 2020.

in the Region if an act constituting the offense or the consequence of the offense occurs in the Region. This Law shall also apply to offenses under this Law committed on board a vessel or aircraft registered in the Region”. Article 38 further stipulates as follows: “This Law shall apply to offenses under this Law committed against the Hong Kong SAR from outside the Region by a person who is not a permanent resident of the Region”. According to Article 10 of the Macau NSL, the law only applies to Macau residents of Chinese nationality. Third, specific regulations on legal procedures are included in the Hong Kong version but not in the Macau version. According to Articles 44 to 47, trials can be private and in the absence of a jury with judges designated by the chief executive. Fourth, the versions contain a crucial difference regarding jurisdiction in section five. An office for safeguarding national security as assigned by the central government was established in Hong Kong; accordingly, the office exercises jurisdiction over a case if it is approved by the central government upon request from the Hong Kong SAR government. In this situation, the prosecution, trial and execution of penalties can take place in China.

An initial comparison of the laws’ provisions suggests that the Macau version of the NSL is “moderate”, as investigations, prosecutions, trials and penalties are handled locally with the autonomy stipulated in the Basic Law, while the NSL in Hong Kong allows the central government to “legally” intervene in these processes if it considers it

necessary. In other words, the Hong Kong version has specific targets of repression (e.g., separatists, pan-democracy camps, and protesters); indeed, the NSL was applied in Hong Kong soon after it was enacted in 2020, while the NSL has largely remained a legal framework in Macau since its enactment more than 10 years ago. This does not mean that national security has no weight in local governance. Securitization in Macau takes a different path—it is preemptive in nature and achieved by legal provisions that are less severe.

### **State-Society Relations in Macau and the Authoritarian Rule of Law**

Both Macau and Hong Kong are each designed as a so-called “executive-led” system: the chief executive dominates policy making, and bill proposals from the government receive support from the legislative assembly according to the Basic Law (Cheung 2007). This system is significantly more successful in Macau due to two crucial differences in the SARs’ state-society relations. First, in Hong Kong, pan-democracy camps can act as veto players and object to government bills they dislike (Ma 2007, 2016). In contrast, pro-democracy members are weak in Macau (4 out of 33) and hardly have any substantial influence. Second, social movements are an alternative channel through which Hong Kong people voice their social preferences and discontent regarding government policy (Fong 2013, Ortmann 2015, Yuen and Cheng 2018). As

previous studies have illustrated, strong local identity has been a powerful mobilization mechanism since the 2000s (Cheung 2011). The same mobilization mechanism is not applicable in Macau, which lacks a strong local identity. Protests are “interest-oriented”, targeted on very specific government policies instead of narratives such as democracy or freedom of speech (Lio and Jeong 2020, Lin 2018). Therefore, the legal system is the only channel that serves the checks-and-balances role in Macau.

Halliday, Karpik and Feeley (2007) argued that legal-political relations are miniature versions of the state-society relations. As a politically conservative society (Yee 2001), courts in Macau are traditionally “rule followers” that tend to apply legal reasoning consistent with government policy. As the weight of national security increased in local governance, the legal system also gradually transformed from a “rule-follower” system to what Rajah (2012) described as an “authoritarian rule of law” system. The “authoritarian rule of law” concept is rooted in Peerenboom’s (2004) “thin” and “thick” versions of the rule of law. A legal system based on the former is like a well-functioning machine; legal provisions are formal, coherent, consistent and predictable. The latter considers the specific culture, values and institutional settings in which the legal system is embedded. Rajah extended Peerenboom’s typology in the case of Singapore by demonstrating that the features of the “thin” version of the rule of law can be conditionally manipulated in practice. For example, while the People’s Action

Party (PAP) can claim that Singapore's high rankings in the IMD World Competitiveness Yearbook and the World Economic Forum Global Competitiveness Report are evidence of the rule of law under the "Western" standard, it is not difficult for legal scholars to find counterexamples in human rights violations (e.g., Rajah 2012, Thio 2004). The divergent perspectives of Singapore's legal system can be mediated and interpreted by the so-called national interests defined by the PAP. The PAP heavily bases its legitimacy on performance (Chua 2017, Wong and Huang 2010); thus, private property, investment and other economic activities are well protected under the rule of law. However, as a stable political order is necessary for economic development, the protection of individual rights may be excepted, as they are subordinated to the survival of Singapore — the fundamental national interest (Rajah 2012). Some seminal constitutional cases, such as *Chng Suan Tze v. Minister for Home Affairs*, demonstrate that the triumph of the PAP was achieved through legal amendments in favor of the ruling party and created a chilling effect that encouraged self-discipline in judges when ruling against the government (Thio 2004).<sup>13</sup> "Authoritarian rule of law" can thus be

---

<sup>13</sup> Section 1 of Article 8 of the *Internal Security Act* authorizes the president or prime minister to order the detention of any person without trial for two years for the purpose of maintaining public order. The defendants in *Chng Suan Tze v. Minister for Home Affairs* requested judicial review to clarify whether the order from the president or prime minister is objective or subjective and won the lawsuit. As a result, the PAP later amended Article 8B, section 2: "There shall be no judicial review in any act done or decision made by the President or the Minister under the provisions of this Act save in regard to any question relating to compliance with any procedural requirement of this Act governing such act or decision". See

interpreted as a “thin” version of the rule of law, but laws are arbitrarily interpreted and implemented in cases that may pose challenges to the regime or government. The next two sections illustrate how it has been accomplished in Macau in two steps. First, new laws were enacted to extend the scope of social control, while judges with specific features have been selected to preside over national security cases. Second, for existing laws, new interpretations have been provided to justify government decisions even if the decisions are logically unreasonable and unpersuasive.

### **“Authoritarian Rule of Law” in Practice: Legislation**

The secretariat of public security (SPS) is the coordinator of national security duties. However, as we mentioned above, securitization is preemptive and achieved through non-NSL legal means. Thus, in recent years, the SPS has endorsed a series of bills that have either extended the authority of the police department or likely constrained the freedom of speech.

The recent debate over the *Civil Protection Law* is a salient example. Macau suffered a huge loss of life and property in Typhoon Hato in 2017. Two years later, the secretary of public security suggested that a new law should be created to improve the

---

Singapore Statutes Online “Internal Security,” Accessed on January 17, 2021.  
<https://sso.agc.gov.sg/Act/ISA1960#pr8A->

government's ability to cope with emergencies such as natural disasters; the new law would replace the regulations in Code 72/92/M, which were established more than twenty years ago. The *Civil Protection Law* has at least two crucial differences from Code 72/92/M.<sup>14</sup> First, the necessity of civil protection in Code 72/92/M only refers to situations in which serious accidents are caused by either natural disasters or humans. The new bill, however, extends the scope of civil protection to cover so-called sudden security incidents, which, according to the definition in Article 2, are incidents that may disrupt the social order, including activities such as assemblies and demonstrations (Article 5). In other words, any political activity can be suspended through coercion if the chief executive declares a Level III emergency (out of a total of five levels) (Articles 6 and 17). Second, the *Civil Protection Law* includes more articles that combat disinformation. If a person is found to be involved in spreading unfounded and biased information when the chief executive has announced a Level III emergency or above, the individual will receive a sanction of up to two years in prison or a penalty of 240 days (Article 25). Moreover, if the disinformation causes substantial public panic or distorts the social order, the sanctions can increase to three years in prison. Widespread worry among local journalists and political activists was triggered by this legislation.

---

<sup>14</sup> See Government Printing Bureau “Code 72/92/M,” Accessed on November 19, 2020. [https://bo.io.gov.mo/bo/i/92/39/declei72\\_cn.asp](https://bo.io.gov.mo/bo/i/92/39/declei72_cn.asp) and “Civil Protection Law,” Accessed on November 19, 2020. <https://www.al.gov.mo/uploads/attachment/2019-05/759835cdb726d9a7ae.pdf>



Their first concern is the vague definition of the term disinformation. As Jason Chao, a local political activist, argued, “there is no good equivalent of the word ‘disinformation’ in Chinese”.<sup>15</sup> In practice, people may have no intent to spread false information but simply pass along ‘misinformation’ because they lack detailed knowledge about the subject in question”. The law does not take such variation into consideration. The Portuguese and English Press Association of Macau (AIPIM) shared its concern that the phrase “unfounded and biased” is “inadequate and highly subjective, posing a risk to the freedom of the press, the editorial independence of the media and citizens’ right to information, potentially inhibiting journalists’ role once a state of emergency is declared”.<sup>16</sup> Moreover, the conditions leading to the chief executive announcing a Level III emergency or above are unclear. As the *Civil Protection Law* now includes a broad definition of “sudden security incidents”, technically, the Macau SAR government can apply the above articles to eliminate any political activity considered to be a threat to the social order. Although the office of the secretary for security later issued a statement stating that the term refers to public gatherings or demonstration activities that cause harm to society or threaten personal safety, as local courts hold a

---

<sup>15</sup> Moura, Nelson “Civil Protection Bill Could be Used to Tackle Protests— Political Activist,” Macau News Agency, July 18, 2019. Accessed on November 19, 2020. <https://www.macaubusiness.com/civil-protection-bill-could-be-used-to-tackle-protests-political-activist/>

<sup>16</sup> Macau Portuguese and English Press Association “Statement 20/5/2017,” Accessed on November 19, 2020. <https://asiansurvey.scholasticahq.com/for-authors>

conservative position and tend to rule strictly in accordance with legal provisions, vagueness in the definitions of terms increases the level of discretion involved in law enforcement, which, in return, encourages social control and discourages checks and balances. Worry that the freedom of speech may be threatened did not stop the legislative process, and the bill was passed in August 2020.<sup>17</sup>

Moreover, Macau set up its own National Security Committee (NSC) in 2018 through Code 22/2018.<sup>18</sup> The SPS substantially dominates the decision making of the NSC (if it acts). For example, Article 4 stipulates that the NSC has 10 members, including the chief executive (chairman), SPS (vice-chairman), secretary of law and administration, director of the public security police, director of legal affairs, director of the legal police, director of the chief executive office, and director of the SPS's office, as well as two consultants, one each from the chief executive's office and the SPS's office. Because the committee members are supposed to meet at least once every 6 months, according to Article 7, the daily operations rely on the NSC office, whose director and vice director, according to Article 13, should be the SPS and director of the public security police, respectively. In other words, the national security duties are

---

<sup>17</sup> See Government Printing Bureau "Civil Protection Law," Accessed on January 17, 2021. [https://bo.io.gov.mo/bo/i/2020/33/lei11\\_cn.asp](https://bo.io.gov.mo/bo/i/2020/33/lei11_cn.asp)

<sup>18</sup> Government Printing Bureau "Code 22/2018," Accessed on November 19, 2020. [https://bo.io.gov.mo/bo/i/2018/36/regadm22\\_cn.asp?printer=1](https://bo.io.gov.mo/bo/i/2018/36/regadm22_cn.asp?printer=1)

directly under the control of the SPS and its subordinate departments. Furthermore, the 2019 amendments to the *Judicial Organic Law* have potentially weakened the checks and balances in the national security arena. The most salient amendment was to Article 19a, excluding foreign judges for national security purposes,<sup>19</sup> which the president of the Macau Lawyers' Association described as a "bad solution" that "violates the city's de facto constitution" but was cited by Andy Tsang, a delegate in the National People's Congress and a pro-establishment member of the Legislative Council as a good reference that Hong Kong should follow.<sup>20</sup> One may argue that as the NSL has never been applied in Macau, there is no reason to claim that Chinese judges are less impartial. However, as we mentioned before in the case of Singapore, political intervention may not be substantial but rather a social norm that opposing the government is dangerous. From this point of view, Chinese judges may be less independent for reasons such as being more vulnerable in their careers (e.g., it is more difficult to find position outside Macau if they are dismissed), being subject to political pressure and due to prevailing

---

<sup>19</sup> See Government Printing Bureau "Judicial Organic Law," Accessed on January 17, 2021. [https://bo.io.gov.mo/bo/i/2019/09/lei04\\_cn.asp](https://bo.io.gov.mo/bo/i/2019/09/lei04_cn.asp)

<sup>20</sup> Cheng, Kris "Macau's Plan to Exclude Foreign Judges from National Security Cases Violates Basic Law, Says Top Lawyer," Hong Kong Free Press, January 31, 2018. Accessed on January 17, 2021. <https://hongkongfp.com/2018/01/31/macaus-plan-exclude-foreign-judges-national-security-cases-violates-basic-law-says-top-lawyer/>; Tian, Yew Lun "China's Hong Kong Law Set to Bar Foreign Judges from National Security Cases: Sources," Accessed on January 17, 2021. <https://www.reuters.com/article/us-china-parliament-hongkong-security-idUSKBN2321CW>

social norms (Macau’s conservative political culture) (Yee 2001, Yee, Liu, and Ngo 1993). Indeed, in case No. 94/2019, a highly controversial case discussed below and based on the *Assembly and Demonstration Law* (ADL), Virato Manuel Pinheiro de Lima, the only foreign judge on the committee, sided with the appellants; although it did not change the final adjudication, he requested that the case file contain a record his reasoning.

### **“Authoritarian Rule of Law” in Practice: Interpretation and Enforcement of the Law**

Another dimension we consider regarding whether the law has become a social control tool is to what extent securitization plays a role in local court judgments. We have evidence to suggest that because of the underlying confrontation with national security, courts have begun to apply new interpretations of laws related to the freedom of assembly and demonstration, and such practice consequently restricts the scope of the freedom of speech. We use legal disputes based on the ADL between 2010 and 2019 (a total of 23 cases) in the Court of Final Appeal as empirical evidence. Based on the stated reasons and outcomes recorded in the case files, we observe that national security has gradually been given more weight in the Court of Final Appeal’s decisions.

Table 1. Frequency Distribution of Appeals in ADL Cases

Year	Number of Cases
------	-----------------

---

2010	3
2011	7
2012	1
2013	1
2014	4
2015	0
2016	2
2017	2
2018	2
2019	1

---

Source: Macau Court of Final Appeal

Before exploring the case files, it is necessary to first examine some essential features of the ADL.<sup>21</sup> Article 1 stipulates three general principles: (1) all Macau residents have the right to assemble in the public sphere or private spheres open to the public without government permission under the condition that such assembly is peaceful and takes place without weapons; (2) Macau residents have the right to demonstrate; and (3) assembly and demonstration are restricted only under the conditions stipulated by the law. Although the freedoms of assembly and demonstration do not require government permission, organizers have an obligation to inform the proper authorities. Article 5.1 stipulates that written notice to the director of the public security police is required 3 to 15 days before an assembly or demonstration will be held if public roads, the public sphere or a sphere open to the public will be used. The written-notice window is shortened to two days if the assembly or demonstration will involve political or labor

---

<sup>21</sup> Government Printing Bureau “Assembly and Demonstration Law”, Accessed on November 19, 2020. [https://bo.io.gov.mo/bo/i/93/20/lei02\\_cn.asp](https://bo.io.gov.mo/bo/i/93/20/lei02_cn.asp)

issues, according to Article 5.2. According to Article 2, the rights to assemble and demonstrate can only be denied if the exercise of those rights involves illegal goals. Finally, if the public security police deny permission for an assembly or demonstration, an appeal is permitted under Article 12: (1) the organizers have the right to appeal to the Court of Final Appeal within eight days of receiving the decision from the police; (2) the reasons for the appeal do not necessarily require a legal basis, and no testimony or fee needs to be submitted before the procedure begins; (3) the public security police have an obligation to respond within 48 hours if summoned to court, and the Court of Final Appeal must make an adjudication within five days after receiving an appeal; and (4) appeals can be made by either protestors or their lawyers.

In reviewing the Public Order Ordinance in Hong Kong, which also falls under the OCTS principle and the Basic Law, it is not difficult to see that Macau's legal system provides more autonomy and fewer restrictions regarding assembly and demonstration than China's own legal system does.<sup>22</sup> For example, while Section 8 of the Public Order Ordinance also requires "notification of public meetings", a public meeting is legal only when "the holding of the meeting is not prohibited by the Commissioner of Police under Section 9", as stipulated in Sections 7.1a and 7.1b. In contrast, government permission

---

<sup>22</sup> Hong Kong E-Legislation "Public Order Ordinance", Accessed November 19, 2020. <https://www.elegislation.gov.hk/hk/cap245>

is not required in Macau. Another example of the differences is found in the appeal procedure. Although Section 16 of the Public Order Ordinance provides a legal remedy, it does not stipulate the timing, procedure, or (pre)conditions as specifically as the ADL does; instead, Section 44A awards more discretion to the chairman of the appeal board.

Next, we delve into the case files. What we are interested in are the conditions in which the Court of Final Appeal supports or denies decisions made by the police to prohibit or impose restrictions on an assembly or demonstration and whether securitization is a reason supporting such judgments.

*Reasons why the Court of Final Appeal Supports or Denies Decisions Made by the Police*

There were two common reasons relied on by the Court of Final Appeal in reversing decisions made by the police. The first reason was that there had been a misinterpretation of the articles of the law. For example, in case No. 25/2011, an organizer informed the civil bureau that he intended to hold a protest from May 27 to June 4, 2011.<sup>23</sup> The notification was declared illegal, as, according to Article 5 of the ADL, such a notification is valid only when three or more organizers have signed it,

---

<sup>23</sup> Since April 3, 2018, when the ADL was revised, protesters have been required to inform the public security police before assemblies or demonstrations can take place. Previously, such notification was sent only to the civil bureau.

but this demonstration only had one organizer. The Court of Final Appeal reversed the decision because following the interpretation of the civil bureau would mean presuming that an individual has lost his or her right to hold an assembly or demonstration, which contradicts the freedom of speech protected by the Basic Law. The second reason was that the restrictions on assemblies and demonstrations had been enforced without sound justification. Case No. 44/2013 describes such a scenario. According to the case file, the organizers intended to hold an assembly in the Penha Garden from 5:00 p.m. to 7:30 p.m. on July 13, 2013. The director of the Public Security Police Force prohibited the assembly on the grounds of it threatening the public order, as Penha Garden is close to the Santa Sancha Palace and the residence of the chief executive. While Articles 8.3 and 8.4 of the ADL give the public security police discretion regarding distancing political activities from government agencies (within 30 meters), Penha Garden is significantly farther away from the assembly site than the distance stipulated by the law, and it is not a transportation hub; the Court of Final Appeal thus considered the reasons provided by the police to be insufficiently specific to justify their decision. It is interesting, however, that in a similar scenario described in case No. 6/2011, the Court of Final Appeal supported a prohibition on a public gathering outside of the central Liaison Office in Macau because the 30-meter distance stipulated by the law would have caused the participants to assemble on the main traffic road, which would have



been not only infeasible in practice but also disruptive of the public order and transportation. A preliminary observation about the cases mentioned above is that the Court of Final Appeal perceived itself as playing the role of a rigorous and conservative rule follower. The primary consideration the court used in its judgments was not from the standpoint of either the police or the appellant but was based on whether the articles of the law required enforcement.

#### *Securitization Appears as a Reason Supporting Government Decisions*

Of all the case files, only two were related to the design of the political system or political rights; they nevertheless provide the chance to determine what informs the Court of Final Appeal's decisions when "politics interplay with the law". The background of the first case, No. 95/2014, is that the first tenure of Chui Sai On, the chief executive, was set to end on December 20, 2014. According to the Basic Law, the chief executive is elected by a 400-member election committee, which excludes the majority of Macau citizens. In August, several local pro-democracy associations decided to express their discontent by launching an online referendum for Macau society to express its preference for universal suffrage and political trust towards the candidates (Chui Sai On was the only candidate). The corresponding offline assembly was denied by the civil bureau because the intention of the assembly was judged to be

a challenge to the Chinese Constitution and the Basic Law, as neither had a stipulation regarding referendums. Following the appeal under Article 12 of the ADL, the Court of Final Appeal found itself in an unusual and awkward scenario for Macau — a confrontation between the freedom of speech and social control. The Court of Final Appeal, however, used somewhat sophisticated reasoning to escape the dilemma and strongly uphold the government’s decision by redefining the term “assembly”. The Court of Final Appeal stated that an assembly must meet two conditions: (1) there must be a group of people who temporarily stay together in one place, and (2) the purpose of the assembly must be to share an idea or uphold a common interest. From the Court of Final Appeal’s point of view, the online referendum was a kind of public opinion survey to reveal a social preference regarding the method used for the election of the chief executive, and the related offline assembly was not an ‘assembly’ even if a public gathering was held given that its purpose was to remind people to participate in the referendum. If the offline assembly was not an “assembly”, then it was not legally protected by the ADL, and the Court of Final Appeal had no reason to accept the appeal.

The second case, No. 94/2019, was even more controversial, as it was related to the anti-extradition law protest in Hong Kong that began in June 2019. Discontent regarding the use of excessive force for coercion and suspicion about the abuse of human rights in the escalated confrontations between the Hong Kong police and the

protesters later became another, equally important part of the participants' appeal in addition to calls to reject the proposed bill.<sup>24</sup> In September 2019, Jason Chao, the local political activist mentioned above, and one of his colleagues intended to hold three assemblies in Macau with the purpose of “urging the police force (especially the Hong Kong Police) to strictly follow the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments”. The public security police responded that the assemblies were prohibited for three main reasons: (1) there was plentiful evidence that protesters in Hong Kong were involved in various crimes, and the Hong Kong police had the responsibility to maintain the social order; (2) there was no evidence that the Hong Kong police had used excessive force for coercion or had abused human rights; and (3) because the organizers intended to hold an assembly that lacked any factual basis, it was reasonable to presume that the participants would undermine the social order. We already know that the Court of Final Appeal will support the public security police if the police justify their use of discretion with sound reasons under a correct interpretation of the law.

What is worth noting is that a new interpretation of the ADL was made to support the public security police. After mentioning that the freedoms of speech and assembly

---

<sup>24</sup> See School of Journalism and Communication, CUHK “Onsite Survey Findings in Hong Kong’s Anti-Extradition Bill Protests”, Accessed November 19, 2020. <https://sites.google.com/view/antielabsurvey-eng>

are protected in Macau, the Court of Final Appeal nevertheless considered those freedoms to be subordinated to the principles embedded in the Chinese Constitution and the Basic Law. It then referred to Article 22.1 of the Basic Law of Macau: “No department of the Central People’s Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Macau SAR administers on its own in accordance with this Law”. The court thus reached the conclusion that the Macau SAR government cannot approve an assembly that has the potential to affect Hong Kong’s local affairs. Case No. 94/2019 is unusual because it was the first time the Court of Final Appeal recognized that the so-called “constitutional principles” are superior to the ADL; violations of these principles would also sabotage the OCTS principle, which would undermine the “national interest” under Beijing’s interpretation. Such a judgment has a profound influence on the freedoms of speech and assembly. As we observed in the case file, unusual preemptive and preventative means used by the police department have become acceptable even though it is very unlikely that in practice an assembly in Macau can have any substantial influence on the Hong Kong SAR government. Moreover, unlike in case No. 95/2014, the Court of Final Appeal did not strategically avoid controversial political issues; instead, it chose to provide a logically unpersuasive justification to uphold the decision of the police. Although the distinct contrast between the judgments

in the two cases lacks explanation, given that securitization has had increasing influence on local governance, the extra reason provided in case No. 95/2019 is explainable, as it is aligned with the transition to an “authoritarian rule of law” in Macau. Indeed, in a recent interview, Sam Hou Fai, President of the Court of Final Appeal, stated that “as a SAR in China, Macau has the responsibility to defend national sovereignty, security and interests”, an apparent echo to Xi’s idea of CNS.<sup>25</sup>

## **Conclusion**

This paper examined how Macau, with a different political and legal system under the OCTS principle, fits into China’s securitization and the impacts of that relationship on Macau’s local governance.

We illustrated that the “executive-led” system stipulated in the Basic Law provides the institutional foundation for that purpose. Without resistance and constraints from the pan-democracy camps and civil society, as in Hong Kong, close cooperation between the administrative and legislative branches in Macau guarantees that Beijing’s will is expressed through mandates by a loyal chief executive, as seen in legislation such as the NSL in 2009 and the establishment of the NSC in 2018. As no direct central-

---

<sup>25</sup> Xinhua News Agency “Be the Cornerstone of ‘One Country, Two Systems’”, Macao Daily, Accessed on November 19, 2020. [http://www.macaodaily.com/html/2019-12/12/content\\_1401830.htm](http://www.macaodaily.com/html/2019-12/12/content_1401830.htm)

local confrontation has ever occurred in Macau, the NSL has never been applied; rather, social control has been preemptive and achieved by a series of non-NSL legal means. China's securitization under the Xi era and the transformation of Macau's legal system into an "authoritarian rule of law" is thus a coherent and continuous process. As a result, the local courts' checks-and-balances role has been weakened, and the protection of the freedom of speech guaranteed under the Basic Law has become conditional.

## Reference

- Balzacq, Thierry. 2005. "The Three Faces of Securitization: Political Agency, Audience and Context." *European Journal of International Relations* 11 (2):171-201.
- Cheung, Anthony Bing Leung. 2007. "Executive-Led Governance or Executive Power 'Hollowed-Out'—The Political Quagmire of Hong Kong." *Asian Journal of Political Science* 15 (1):17-38.
- Cheung, Chor-yung. 2011. "Hong Kong's Systemic Crisis of Governance and the Revolt of the "Post-80s" Youth—The Anti-Express Rail Campaign." In *New Trends of Political Participation in Hong Kong*, edited by Joseph Y.S. Cheng, 417-448. Hong Kong: City University of Hong Kong.
- Chua, Beng-Huat. 2017. *Liberalism Disavowed: Communitarianism and State Capitalism in Singapore*. Singapore: NUS Press.
- Fong, Brian Chi Hang. 2013. "State-Society Conflicts under Hong Kong's Hybrid Regime: Governing Coalition Building and Civil Society Challenges." *Asian Survey* 53 (5):854-882.
- Halliday, Terence C., Lucien Karpik, and Malcolm M. Feeley. 2007. "The Legal Complex and Struggles for Political Liberalism." In *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism*, edited by Terence C. Halliday, Lucien Karpik and Malcolm M. Feeley, 1-42. Hart Publishing.
- Ieong, Meng U. 2017. "Macao and Hong Kong--Convergence or Divergence? The 2014 Anti-Retirement Package Bill Protest and Macao's Governance Crisis." *Asian Survey* 57 (3):504-527.

- Ieong, Meng U. 2019. "Attitudes towards the Umbrella Movement in Macao: Findings and Implications from a Survey of University Students." *China: An International Journal* 17 (2):181-195.
- Lin, Zhongxuan. 2018. "Networks of Play and Resentment: Emotionally Mobilized Protests in Macau in the Internet Age." *International Journal of Communication* 12:3274-3293.
- Lio, Chi Fai, and Meng U Ieong. 2020. "Labor Protests in Macau (2000-2017)." In *Macau 20 Years after the Handover: Changes and Challenges under "One Country, Two Systems"*, edited by Ieong Meng U, 75-89. Routledge.
- Ma, Ngok. 2007. *Political Development in Hong Kong: State, Political Society, and Civil Society*: Hong Kong: Hong Kong University Press.
- Ma, Ngok. 2016. "The Making of a Corporatist State in Hong Kong: The Road to Sectoral Intervention." *Journal of Contemporary Asia* 46 (2):247-266.
- Mcdonald, Matt. 2008. "Securitization and the Construction of Security." *European Journal of International Relations* 14 (4):563-587.
- Nathan, Andrew. 2003. "Authoritarian Resilience." *Journal of Democracy* 14 (1):6-17.
- Nathan, Andrew J., and Andrew Scobell. 2012. *China's Search for Security*: New York: Columbia University Press.
- Ortmann, Stephan. 2015. "The Umbrella Movement and Hong Kong's Protracted Democratization Process." *Asian Affairs* 46 (1):32-50.
- Peerenboom, Randall. 2004. "Varieties of Rule of Law: An Introduction and Provisional Conclusion." In *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.*, edited by Randall Peerenboom, 1-53. RoutledgeCurzon.
- Rajah, Jothie. 2012. *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore*: New York: Cambridge University Press.
- Thio, Li-ann. 2004. "Rule of Law Within A Non-Liberal 'Communitarian' Democracy: The Singapore Experience." In *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.*, edited by Randall Peerenboom, 180-221. USA and Canada: RoutledgeCurzon.
- Waever, Ole. 1995. "Securitization and Desecuritization." In *On Security*, edited by Ronne D. Lipschutz, 46-86. New York: Columbia University Press.
- Wong, Benjamin, and Xunming Huang. 2010. "Political Legitimacy in Singapore." *Politics & Policy* 38 (3):523-543.
- Yee, Herbert S. 2001. *Macau in Transition: From Colony to Autonomous Region*: New York: Palgrave.
- Yee, Herbert S., Bo-long Liu, and Tak-wing Ngo. 1993. "Macau's Mass Political

- Culture." *Asian Journal of Public Administration* 15 (2):177-200.
- You, Ji. 2016. "China's National Security Council: Evolution, Rationality and Operations." *Journal of Contemporary China* 25 (98):178-196.
- Yuen, Samson, and Edmund W. Cheng. 2018. "Rethinking Contentious Politics in Hong Kong: Change and Continuity." *Hong Kong Studies* 1 (1):7-25.