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## Hong Kong as a property jurisdiction\*

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### Abstract

#### Purpose

This study aims to explore how urban governance of Hong Kong is impacted by the formulation and implementation of the new constitutional order of “one country, two systems” that distinguishes between the British colonial government and the current government under Chinese sovereignty.

#### Design/methodology/approach

While the literature recognises the society of Hong Kong has been heavily relying on land and property activities, few attempts notice the uniqueness of Hong Kong’s sequential constitutional orders and its relations to those activities. This study presents a geographical enquiry and an archival study to illustrate the spatiality of the new constitutional order and its implications on land injustice. Drawing from the works of legal geography and urban studies, this study extends and clarifies Anne Haila’s conception of Hong Kong as “property state” to “property jurisdiction”.

#### Findings

Though common law and leasehold land system were perpetuated from the colonial period, the new constitutional order changed their practices and the underlying logic and ideology. The urban governance order of this

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property jurisdiction is intended for prosperity and stability of the society, and for the economic benefit and territorial integrity claim of the Chinese sovereignty.

### Originality/value

This study enriches the literature of Hong Kong studies in three major areas, namely, the relationship with China, urban governance and land injustice. It offers a conceptual discussion, which contributes to comparative territorial autonomies studies. It also contributes to legal geography by providing insights beyond the western liberal democracy model.

### Keywords

Hong Kong; Sovereignty; Legal Geography; Territory; Urban Governance

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## Introduction

The literature on Hong Kong has never downplayed the crucial role of landed property and real estate development. Phrases such as “real estate hegemony” (Poon, 2005), “land (re) development regime” (Tang, 2008), “property-led financial regime” (Smart and Lee, 2003), “land-dependent economy” (Wong, 2015) and “property-led urban development” (Ip, 2018) are invoked to characterise Hong Kong’s urban governance dynamics. These works provide useful vocabulary for recognising the domination of property development and discussing land injustice in Hong Kong. However, they mainly focus on the economic aspect of how the property market works and functions, and the social aspect of how the hegemony of private property development exploits the social life of the general public. More linkages with the political implications should be added to the discussion. One of such attempts had been made by Anne Haila in her promising comparative urban analyses of Hong Kong and Singapore (Haila, 2000, 2016, 2017). She conceptualised Hong Kong (and Singapore) as a property state because the real estate development does not only dominate the functioning of the whole economy but also contribute to a significant proportion in the public finance due to the leasehold land system. While these ideas are convincing, they are still found wanting for neglecting the greatest constitutional difference between these two cities – Singapore is an independent state, but Hong Kong is not. This article, thus, seeks to clarify and extend Anne Haila’s earlier conception of Hong Kong as a property state to a property jurisdiction, addressing the following issues in Hong Kong studies.

Several questions in Hong Kong studies remain for further and continuous explorations (Lui et al., 2019; Lui and Fong, 2018), including, for example, how to understand urban governance of Hong Kong? How to understand the relations between Hong Kong and China? It is the objective of this article to address these issues by exploring how urban governance of Hong Kong is impacted by the “one country, two systems” (OCTS) model. Specifically, it explores the formulation and implementation of this new constitutional order (a term increasingly used by Beijing), which distinguishes between the British colonial government and the current special administrative region (SAR) government under Chinese sovereignty. This article argues that terming Hong Kong as a property jurisdiction can better capture the urban governance of Hong Kong, which heavily relies on land and property activities, in its constitutional context under Chinese sovereignty.

This article draws from a small, but important, part of literature in legal geography and urban studies to conceptually reflect upon the legal space of Hong Kong. Empirically, some evidence from declassified archival files, textual accounts and observations serve to demonstrate the spatio-legal manifestation of the urban ordering imposed in this property jurisdiction. In what follows, this article, firstly, revisits Anne Haila’s articulation of property state and uses some debates in legal geography to evaluate it. Then, it traces the making of the new constitutional order and explores the spatiality of this order as a property jurisdiction. Finally, this article concludes with the implications of the extended conception on studying urban governance and land injustice of Hong Kong.

## **Theoretical considerations: property state and legal geography**

“In a property state, real estate plays an important role in the economy, public revenue and the wealth of people”, wrote Anne Haila (2016, p. 16). As for the purpose of this article, and that the concept of property state serves as a point of departure, it is necessary to discuss the intellectual history of, and explain, the concept of property state in details. For many decades before she rests in peace, Anne Haila had been interested in analysing capitalist cities with land rent theory as the major framework. Her theory about land rent was not only based on the economic sense but more importantly to develop that as a social relationship (Haila, 1990). As she stressed:

rent as a social relation involves a power relationship and social control. These can be arranged in different ways: land can be private, common, public, collective, state, municipal and shared (Haila, 2016, p. 58).

Her comparative urban analysis was primarily based on case studies of landed property relations in various cities, focussing on government policies and institutions to analyse the mechanisms (notably government institutions and property markets) and the relationship between actors. While these various arrangements of property relations lead to different consequences, Haila was particularly interested in those cities with the kind of government (or, in her word, state) that directly engages in land market and related activities. As a result, Hong Kong and Singapore, having leasehold land system rooted in the British colonialism in common, became her laboratories. Following her comparative analysis of the political economies of Hong Kong and Singapore in the 1990s, Haila (2000) proposed to term these two cities “property states”.

**Table 1 A comparison between urban regime and property state**

	<b>Urban regime</b>	<b>Property state</b>
<b>Primary concern</b>	Governing capacity of a local state	The role of land and property development in a state
<b>Concepts</b>	Power relations between actors, social production model, social control model (in China)	Land relations, rent, institution, tenure
<b>Characteristics</b>	The local state and non-state actors build coalitions for benefits	Land property and real estate do not only form an important public revenue but also dominate the whole economy and society
<b>Places of theorisation origins</b>	Cities in the USA, especially Atlanta	Hong Kong and Singapore

The concept of property state significantly differs from other concepts in the broader literature on urban governance and politics because they seek to conceptualise different characteristics observed in cities and address different concerns. The author is mindful of the existence of these concepts. Theorising from the local urban politics in the USA, urban regime theory, among others, concerns the governing capacity of the local state. It focusses on the power relations at the local state and dynamics between the state and non-state actors in coalition-building for maximising their benefits (Stone, 1989, 1993). However, though some works probe urban politics of Chinese cities (Xu and Lin, 2019; Zhu, 1999) or Hong Kong (Chiu and Lui, 2003) with urban regime theory, the context of urban regime theory is irrelevant to this article because landed property is not

the primary concern of this theory, and the sovereignty and state issues are also not its foci (Table 1). For the aim of this article, extending the concept of property state to property jurisdiction shall address the substantial character of the reality of Hong Kong overlooked by these concepts: the constitutional order of Hong Kong under the Chinese sovereignty.

Property state has two core characteristics, which are evidently found in common from analysis of Hong Kong and Singapore. The two cities share the features of having a high-density and high-rise urban environment, a government as the landowner of the limited land resources, a land mechanism of leasehold system, which leases land for specific lengths of time periods. These urban features have brought up two characteristics of property state into consideration.

**(1) Land property and real estate form an important source of public revenue in the public finance.**

Because of the leasehold land system, the government is able to collect a significant proportion of public revenue through leasing land, land premiums and property tax (Haila, 2000). After acknowledging this observation, Haila further conceptualised the public revenue generated from the use and sale of landed property, which is owned by the state as “fiscal rent” (Haila, 2016).

**(2) Land property and real estate dominate the whole economy and society.**

This can be seen by the constitution of stock market by important real estate companies and the substantial contribution to economic growth made by this sector (Haila, 2000). Property development, investment and speculation virtually became the only way for wealth accumulation as a result, and the wealth of people is intertwined with property that “people are keenly aware of property prices” (Haila, 2017, p. 503), socially making people property-minded.

This article suggests that these two characteristics can be considered as responding to the two main functions of the state, according to state theory. It is always debatable what the state is, does and should do. Generally speaking, the state performs two functions, economic and ideological, as a legal geographer Blomley (1988) summarised. The state, in part, has to govern and facilitate economic growth and also ideologically legitimise the social relations of production (Johnston, 1990). The first characteristic of property state makes room for the state apparatus to function with a tax base, while its second characteristic has

a widespread impact on gaining the social support for the property-led society.

Despite the commonalities between Hong Kong and Singapore, Haila (2017, 2016) also noted the differences between two cities in terms of development path and policies, including public housing tenure, economic regulations and participants of the stock markets. However, this article argues, to further use the capacity of this conceptualisation with property thinking, there is a need to push the work forward to consider a missing, but substantial, difference between two cities: the constitutional order. Singapore is an independent sovereign state, but Hong Kong does not fulfil the definition of the state provided its status as an administrative region in China. As this important difference is absent from the analysis of land regimes and their historical development, this limitation in the conceptualisation has regrettably loosened the concept. The literature is found to have a growing interest in exploring the relations between property and sovereignty, and the latter deserves attention here when reflecting upon the concept of property state. Legal geography, this article suggests, can help with this task.

Urban scholars comprehend the political entity of Hong Kong with the concept of state, such as city-state (Chiu et al., 1997; La Grange and Pretorius, 2016), especially when compared with Singapore, and semi-state (Yang and Li, 2013). Some also adopt this notion for fitting their works within the established theory or framework without probing them with the social reality (for example, Lai et al., 2019). Similarly, Haila adopted the notion of “state” to describe both Hong Kong and Singapore. However, the meaning of state is indeed ambiguous. Though social scientists are attempting to extend the definition of state to capture what they understand as complex phenomena, many of these have gone too far from the crucial and core ideas. A concept is not useful if its meaning is too broad, and it is always useful to return to the basics (if the basics are not included in the so-called “extended concept”, then that is not actually an extended concept but a tampered one). The most basic understanding of state is a political entity, where a sovereignty exercising authority over a territory – what can be understood as a country. This is the case for Singapore. However, this understanding should have been rejected in the case of Hong Kong. If we take the classical sociological definition provided by Max Weber (Blomley, 2003), Hong Kong itself does not monopolise the legitimate use of physical force within the territory because that is ultimately monopolised by Chinese sovereignty. Relatedly, sometimes the state is also understood in terms of a central-local relationship. In a federal system, for example, in the USA and Switzerland, local states still enjoy residual power after certain powers are centralised by the central state. However, the constitutional order explicitly announces that Hong Kong

does not enjoy any residual power, as will be elaborated below. Moreover, in the literature on central-local state relations, the analysis based on the western liberal democracies model shows contradictory ideologies might exist in central and local states, and this complex organisational nature of the state sometimes leads to conflicts in performing the functions of the state (Blomley, 1988). The local state can disagree with the central state because of, in part, party politics and other reasons. Lefebvre (1996, p. 125) alerts the differences between the power structures in different cities that:

[i]n the United States, the difficulties of Federal administration, its conflicts with local authorities, the terms of reference of 'urban government', divided among the manager, the political boss and the mayor and his municipality, cannot be explained in the same way as the power conflicts (administrative and juridical) in Europe and in France.

In Singapore, such a central-local relationship does not exist. For the case of Hong Kong, this relation can hardly be uncritically applied to understand the relationship between China and Hong Kong because the governments share consistent ideologies under the new constitutional order.

To reach a useful analysis of Hong Kong, there is a need to differentiate the constitutional order of the SAR government from that of the colonial government. The ideology and governance practices of Hong Kong are subject to the new constitutional orders imposed by Chinese sovereignty. This constitutional order is both a sovereignty claim and a spatio-legal claim for territorial integrity. However, the notion of property state, though considered the two functions of government, fails to consider this unique legal space of Hong Kong.

Jurisdiction, this article suggests, provides a useful conceptual tool for deciphering the legal space of Hong Kong, following the works in legal geography (Blomley, 2013; Cowan et al., 2012; Delaney and Leitner, 1997; Freeman, 2017; Jeffrey, 2020; Valverde, 2005, 2009). Jurisdiction is defined as “the territorial limits of legal authority”, which is also the “geographical extent to the exercise of law or a legal system” (Jeffrey, 2020, p. 1). Literally, jurisdiction has two meanings, one is the exercise of judicial power, another is the territory within which such an exercise is legitimised. Above this surface, it is clear that jurisdiction is closely-related to sovereignty. Without sovereignty, there is neither separation of powers in the state nor judicial power. So, jurisdiction implies the presence of state power, much more than only judicial power. In other words, jurisdiction is a spatio-legal manifestation of state sovereignty. “The complex machinery of such legal assemblages as “jurisdiction” has yet to be thoroughly mined for purposes of theorizing governance”, Valverde

(2009, p. 155) writes. In terms of the political reality, Hong Kong is a jurisdiction, territorially within China, under Chinese sovereignty. Conventionally, this can be perceived with imaginaries of a hierarchical model with vertical and nested scales (Brenner et al., 2003). However, this scalar logic might be dangerous. Scales are powerful as they are a technology of government, having a performative force to organise legal practices (Blomley, 2013). The state sovereignty uses such a scalar logic to construct jurisdiction as ordered and universal as discrete areas with hard boundaries (Blomley, 2013). The dangerous effects of accepting this view, for Blomley (2013, p. 6), is to “militate against an interstitial conception of legal space”, having the relational thinking of the uncertainty and the complexity abandoned.

However, this article suggests, recognising the existence of jurisdiction as the legal space of a city does not mean accepting this taken-for-granted scalar logic. Indeed, acknowledging the political reality, that the powerful scalar logics are at work, is the only way that provides the opportunity to reflect upon the problems of urban governance. It is to say, through studying the performativity of scales, one can make clear how things are into being. As argued elsewhere<sup>2</sup>, scalar politics are involved when the states attempt to use such a government technology to link certain governance problems (for example, new town planning in Hong Kong) with a specific question that can be governed by a distinct jurisdiction. The effect of this is to reduce the complexities of urban politics into narrowed and often technical, conversations. This shows conceptualising a city as a jurisdiction does not necessarily lead to the pitfall of the problematic geographical imaginary. In contrast, this is important for understanding how Hong Kong and China are brought together in a jurisdictional relation, which is an undeniable reality. Terming Hong Kong as a jurisdiction, which has the capacity to consider both the functions and relations of the governments, allows reflection upon the new constitutional order, that is, imposed by the powerful state sovereignty, and pushes forward the debates about property state. As argued, extensions of concepts retain the basic cores of the original one, including both conceptual and epistemological; when conceptualising the concept of property state, the importance of history was stressed (Aalbers and Haila, 2018). With this emphasis, a historical-geographical enquiry is accordingly necessary. This understanding of jurisdiction requires an exploration of the complex urban governance in terms of scales and plural temporalities (Valverde, 2009). To further develop this concept of property jurisdiction,

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<sup>2</sup> The author develops this argument in another paper presenting an archival study of Tin Shui Wai new town planning and the Sino-British negotiations over the future of Hong Kong (Yip, forthcoming).



this article now turns to the formulation of the new constitutional order during the Sino-British Negotiations in the 1980s. This new constitutional order differentiated the colonial and the SAR governments.

## **New constitutional order**

The Sino-British Joint Declaration was a legal product of the two states' negotiations over the colony's future in the early 1980s. On this international treaty outlining the constitutional arrangement of Hong Kong after the sovereignty transfer to China in 1997, the People's Republic of China (PRC) declared the basic policies of governing Hong Kong, which is known as OCTS. This declaration solved the land lease problem, which concerned the society, but it also imposed a new spatio-legal order that leads to land injustice. The Basic Law promulgated in 1990 replaced the Letters Patent and the Royal Instructions in colonial Hong Kong to become the supreme constitutional instrument after 1997. Since then, the Chinese sovereignty strengthened their rule over this territory by interpreting and clarifying the ideological and legal principles stated in these constitutional documents or quoting the term increasingly used by the pro-Beijing scholars and commentators, the "new constitutional order". For a long time, some legal scholars in Hong Kong have been exploring the complexities of the new constitutional order and examining the continuity of the colonial common law system (Ghai, 1999; Wacks, 1999). This article contributes a historical-geographical enquiry to this exploration.

Different memoirs of the Chinese leaders commonly documented that the Chinese Communist Party (CCP) led by Deng Xiaoping had not thought of a preliminary solution to the question of Hong Kong until mid-1982 (Huang, 1997; Lu, 2009; Xu, 1993). The secretariat of CCP decided to resume the sovereignty of Hong Kong in April 1981 as "forced" by a scheduled meeting with Margaret Thatcher, the British Prime Minister, in September 1982, but they had no idea of how to resume and govern Hong Kong. Deng charged Liao Chengzhi, who was leading the secretly established Hong Kong and Macau Affairs Office (HKMAO), to form a study team of five persons<sup>3</sup> and propose the preliminary principles of governance within three months. Around March and April in 1982, this team submitted 12 principles of basic policies, which are roughly the same as what were included in Annex I of the Declaration (Huang, 1997). When Huang was writing the first draft, he added a clause at the end of these principles: "these principles are guaranteed to remain unchanged for X

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<sup>3</sup> The five members include Liao himself who directly presided the decisions, Huang Wenfang of Xinhua in Hong Kong, and Lu Ping who carried the working title of the team chairperson.

years after 1997". This clause was intended to stabilise the society because the team realised that most of the people in Hong Kong were feeling hesitate to the sovereignty transfer (Huang, 1997; Lu, 2009). Liao suggested "just give 50 years" if the rationale was just to ensure the confidence of the society<sup>4</sup>. Deng then instructed the team to further prepare for a final proposal within one year by conducting field investigation in Hong Kong (Lu, 2009, p. 17), he himself also interacted with twelve batches of Hong Kong businessmen, most notably the property developers, in Beijing in early 1982. Rather than the livelihood of the general public, the confidence of the business sector concerned the state. Before the idea of OCTS was clearly formulated, Liao decided the basic policies should maintain the capitalism and lifestyle of Hong Kong to help maintain the prosperity and stability of Hong Kong, so as to benefit the four modernisations. Having these basic principles in mind, Deng was ready to meet Margaret Thatcher in September.

In September 1982, when Thatcher insisted the validity of the international treaties and sought to continue the governance and administration of Hong Kong to maintain its prosperity, Deng (1993, p. 1) strongly opposed.

Our basic position on the question of Hong Kong is clear. There are three major issues involved. One is sovereignty. Another is the way in which China will administer Hong Kong so as to maintain its prosperity after 1997. In addition, still another is the need for Chinese and British governments to hold appropriate discussions on ways to avoid major disturbances in Hong Kong during the 15 years between now and 1997.

As such, Deng proposed to treat Hong Kong with special policies. However, Thatcher doubted whether the Chinese leaders understood that the principles of the rule of law and the free society were crucial to the prosperity and stability of Hong Kong (Chung, 2001). However, the British also understood Hong Kong was not defensible because Hong Kong had relied on China for food and water supply that controls the lives of people and secures the sovereignty over Hong Kong (Cheung, 2014). Moreover, Hong Kong's value as a colony was its economic advantage, and if China were to intervene Hong Kong violently, the British would lose the advantages. Any tensioned confrontation between states was in no sense favourable to the prosperity and stability of Hong Kong (Chung, 2001). After the Sino-British Negotiations officially started in July 1983, the British changed their position to forgo both sovereignty and administration of Hong Kong after the expiry of land lease.

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<sup>4</sup> Huang (1997) emphasised the number of years was not related to the prediction of economic growth of China.

After clearly stating the OCTS principle in early 1984 for the first time, Deng (1993, p. 6) explained this to an industrial and commercial delegation from Hong Kong in June,

We have stated on many occasions that after China resumes in 1997, Hong Kong's current social and economic systems will remain unchanged, its legal system will remain **basically** unchanged, its way of life and its status as a free port and an international trade and financial centre will remain unchanged and it can continue to maintain or establish economic relations with other countries and regions. [emphasis added]

It is noteworthy that continuing the social and economic systems will maintain the prosperity and stability, while changing the legal and political systems shall legitimise the Chinese sovereignty in Hong Kong (Deng, 1993, p. 11). Deng also explained to the British that they have been formulating OCTS for several years as “a means of settling the Taiwan and Hong Kong questions” (Deng, 1993, p. 12).

In many places on the Declaration and the Basic Law, capitalist economy was emphasised. This was mainly because the Chinese state realised befriending the capitalists is important for benefitting China. For the Chinese:

to penetrate into society through the top elite and then to befriend the middle stratum of professionals and businessmen had long been the objective of the united front in Hong Kong (Chu, 2010, p. 19).

As Xu (1993), the Xinhua Hong Kong Director, further explained, OCTS was formulated after investigating the mentality of the capitalist class, who was found not opposing socialism and was designated as the executor of this constitutional principle. The term “Hong Kong people administer Hong Kong” means that the capitalist class administers the society. In his words, if the SAR government was to be organised by the working class, OCTS would be violated. The working class shall only co-operate with, monitor and influence the SAR government, but not take up the leadership role. This implies two characteristics of the new constitutional order, in part the urban governance is not autonomous, not being equivalent to the conception of a local state, but being territorially integral to the sovereignty of the central state, and in another part a class bias favouring the capitalist class underlies the urban politics of Hong Kong.

Relatedly, the new constitutional order was further clarified by Beijing through some writings after 1997 (Jiang, 2007, 2017; Wang, 2013)<sup>5</sup>. These

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<sup>5</sup> Both Jiang Shigong and Wang Zhenmin are legal scholars and law professors in Beijing; both of them had served in the Liaison Office of the Central People's Government in Hong Kong.

include a significant white paper entitled *The Practice of the “One Country, Two Systems” Policy in the Hong Kong Special Administrative Region*, which was directly published by the Chinese State Council in June 2014 (State Council of the People’s Republic of China, 2014). This white paper is an authoritative presentation of the Chinese state’s position and stance on Hong Kong, emphasising the complete jurisdiction exercised by the Chinese sovereignty. Suggesting that Hongkongers do not have a sufficient understanding of the OCTS principle and the Basic Law, the Chinese state appointed legal scholars to write this white paper. They clarified that the high degree of autonomy of Hong Kong is neither a full autonomy nor a decentralised power from the Chinese state. Instead, it should be understood as the power which is authorised by the central leadership for Hong Kong to run the local affairs. The degree of autonomy “is subject to the level of the central leadership’s authorisation”. Moreover, the power relation between the Chinese state and Hong Kong is peculiarly different than that between the federal government and the states in the American context or between the state and municipality in the European context, as the white paper states that:

the ‘one country’ is the premise and basis of the ‘two systems’, and the ‘two systems’ is subordinate to and derived from ‘one country’. But the ‘two systems’ under the ‘one country’ are not on a par with each other.

In other words, there is no residual power in Hong Kong. This implies the relation between China and Hong Kong is not equivalent to the conventional central-local state relation as discussed.

These ideological principles around the complete jurisdiction did not suddenly emerge but are deeply embedded in the historical formulation of the new constitutional order<sup>6</sup>. When Deng Xiaoping talked to the members of the committee for drafting the Basic Law in 1987, he emphasised that “Hong Kong’s system of government should not be completely Westernised; no Western system can be copied in too” (Deng, 1993, p. 55). Deng explicitly rejected the ideas about the separation of the three powers, multi-party elections, bicameral legislature, and universal

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<sup>6</sup> It remains an intriguing question to ask why the legal practitioners in Hong Kong often refuse to accept the new constitutional order. They thought the order is something added to the Basic Law due to the tensions emerged in recent years. These practitioners, and a proportion of the general public were not aware of the unequal power relations between China and Hong Kong. They forgot that they actually have no choice to choose between accepting or rejecting the new constitutional order. The new constitutional order constitutes the reality of Hong Kong. If the legal practitioners and the general public find the status quo problematic, they must face this reality and challenge it, rather than only mobilising their common law imaginaries to resist against the new constitutional order.

suffrage. Deng also highlighted that he agreed that Hong Kong's affair would naturally be administered by the people of Hong Kong, but it did not mean democracy or universal suffrage would be appropriate because the administrators must be "people of Hong Kong who love the motherland and Hong Kong". He also made it clear that it will not be a realistic idea for the Central Government not to intervene in Hong Kong's affairs (p. 57). Deng urged the committee members to "draft very carefully, proceeding from realities" and to embody the concept of OCTS (p. 58). When the Basic Law has been drafted, Deng appraised the document as a "creative masterpiece" (p. 63) on 17th February 1990.

The above discussion appears to reject conceptualising the legal space of Hong Kong as a state. Instead, understanding Hong Kong as a jurisdiction can help recognise the reality of this society and its relationship with the sovereign state. As Jonas (2015, p. 26) writes, each level of the state "exercises its powers across a territorial jurisdiction". This is important for clarifying the nature of urban governance in Hong Kong, extending Anne Haila's conception. It is acknowledged that the new constitutional order affects urban governance in every aspect. To demonstrate how property jurisdiction can extend property state, this article now moves to focus on, among others, the aspect of land and property development.

## **Legal geography of property jurisdiction**

This section extends the two characteristics of property state by considering how land and property development do not only create government revenue and dominate the economy but also fulfil the new constitutional order of this jurisdiction to favour the sovereignty, including economic interests and territorial integrity. There are two characteristics of the post-1997 Hong Kong as a property jurisdiction. Firstly, land property and real estate development form the major source of public revenue in the public finance within this jurisdiction, which is spent on megaprojects, which serve the economic interests of the Chinese state and fulfil the territorial integrity claim. Secondly, land property and real estate development dominate the whole economy and society with a class bias favouring the capitalist class, who is treated as the governing and commercial partner with the Chinese sovereignty (not merely with the local government due to the three-player game (Fong, 2014) as discussed below). To facilitate these operations, legal arrangements related to land rent and relations are central to re-configure this territorial jurisdiction after the sovereignty transition. This section begins with an account of the legal changes made to the land-related public finance and the underlying reasons, which are to be followed by a brief discussion of their consequences for land injustice and territorial integrity, as evidenced by the empirical data of public finance.

What triggered the Sino-British Negotiations was the urgent problem of land lease expiry of the New Territories. There are two observations about that episode (Yip, forthcoming): firstly, the Chinese did not trust the British; and secondly, the Chinese leadership could not comprehend the legal concepts and the land lease problem as they had no knowledge about the English law, and because of the socialist system they had no knowledge about the political economy of real estate property market, so they sought expert knowledge from Hong Kong. This strengthened the need to include the urban elites in the united front work. A key person at stake here is Chun-Ying Leung. Since the economic reform, Leung started teaching professional knowledge of land surveying in China. In early 1984, almost reaching the end of the Negotiations, HKMAO consulted Leung on the land lease problem. Leung drafted the land lease arrangement, which was fully adopted by Deng as Annex III to the Joint Declaration (Leung, 2011).

Annex III, entitled Land Leases, announced the decision of extending all the existing land leases until 2047, the policies of land leasing, and the changes to the public finance relating to land rent. Most notably, the declaration imposed a quota of land sales during the years before 1997 and regulated the use of the land revenue on infrastructure and land development only. These two measures were proposed because Beijing suspected that the British might lease out all the land in Hong Kong for transferring money to Britain. As Deng (1993, p. 13) said in July 1984,

leases of land will be valid for 50 years after 1997 and that the British Hong Kong Government may use the income from the sale of land. However, we hope it will use that income for capital construction and the development of land, and not for administrative expenses.

To prevent capital outflow, Leung tried to incorporate these principles into measures that could be written into Annex III. It is likely that he was aware of the Capital Works Reserve Fund (CWRF) that was established in 1982 before approving the Tin Shui Wai new town development project (Yip, forthcoming). CWRF was a technicality in the public finance to fund public works on a project basis, which had no relation with the land revenue. Leung took advantage of this prevailing institutional design to link up the land revenue and the expenditure on infrastructure and land development, departing from its original intention to favour the Chinese political will. The Joint Declaration required all the land premium income earned by the colonial government “shall be put into the Capital Works Reserve Fund for the financing of land development and public works in Hong Kong”. Then that the land income after reducing the land production cost shall be shared by the colonial government and the future SAR government in a Land Fund. Thus, only

half of the land revenue could be used by the Colonial Government. This legal change fundamentally modified CWRP because Leung, on the one hand, stressed the usage of money in the fund could only be infrastructure and land development; and, on the other hand, specified the sources of revenues of the fund that all the land income must be deposited into it, unlike the previous practice of the colonial government.

Land injustice is one of the consequences of this legal change. Land injustice is a contested standard to assess the good use and treatise of land. This standard can be tentatively delimited to the process of land value creation and appropriation (Yip et al., 2019). As such, land justice is defined as:

an aspiration that the urban inhabitants are entitled to the rights to difference and the city during the process of land production, which fairly utilises the differential locational advantage of urban land for satisfying the needs in public urban life (Yip et al., 2019).

To the specificity of this legal change, there are three main land injustice problems relating to the legal geography of property jurisdiction. Firstly, it concerned the outlook of managing the future land needs. Li and Yu (1987) concluded that the land sales restriction was not in favour of the future development of the city because imposing a land sales quota might lead to land supply shortage and reduce the land revenue that affects the public finance. Secondly, this has eliminated the possibility of redistributing the land income, as a collective product of the society in the urban land nexus (Roweis and Scott, 1981), into social welfare, education, public health, public housing or other areas of government expenses<sup>7</sup>. Lai and Chau (2019, p. 7) wrongly understand the public finance reality of Hong Kong when they claim the land monopoly has redistributed the land income to fund subsidised public housing and education and sustain a surplus budget. Finally, a neoclassical economic conception of land as property has dominated the society. This favours the property developers and urban elites. As Xu (1993, p. 237) as a CCP official observed, as property developers had massive land hoarding and there was an oligopoly real estate market, they urged the land commission to strictly follow the quota: if extra land were leased, their profit would decrease. Until today, it is still important to recognise the partnership between the Chinese state and the capitalist class in governance (Fong, 2014), which reinforces the conception of property jurisdiction that the sovereignty exercises the power at this scale. He argued that the nature

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<sup>7</sup> In the current practice, the SAR government virtually ignores the existing mechanism, which allows the transfer of money between CWRP and the general accounts for the social services at the discretion of the Financial Secretary, except the few transfers in the first few years after the sovereignty transfer.

of the governing alliance in Hong Kong has changed from a two-player game to a three-player game, because in the past the British state did not directly get involved in the colonial affairs. However, the Chinese state has “stepped in by co-opting the business sector on its own through the appointment of NPC and CPPCC delegates and the united front work of the Liaison Office”<sup>8</sup>. In view of the increasing participation of the property developers and investors from China in the property market in Hong Kong, the new constitutional order, which separated Hong Kong as a jurisdiction with an independent economy has supported the rapid economic development of China. This was crucial for contemporary China because CCP had to rely on economic reform and rapid development to resolve their legitimacy crisis (Wang, 2011).

Another consequence of the new constitutional order is territorial integrity. In addition to stating that the SAR region is an inalienable part of the PRC, the basic law also states that all the land resources of Hong Kong belong to the Chinese state, while the Chinese state allows Hong Kong Government to manage, use and develop the state property, as Article 7 of the Basic Law reads:

The land and natural resources within the Hong Kong SAR shall be state property. The Government of the Hong Kong SAR shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organisations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region.

Among other land development controversies, the massive construction of mega-projects and cross-boundary infrastructures is the case in point to illustrate the issues of land injustice and territorial integrity. To begin with, it requires a brief explanation of Chun-Ying Leung’s understanding of urban land, which informed his articulation of the legal change. Leung perceives urban land as a commodity with a value and argues for a “virtuous cycle” in urban development: when the land is sold to private property owners and the land premium is earned by the government, the government can make use of this money to construct infrastructure and produce more serviced land into the market, which once again brings money to the government. Leung promotes property ownership and argues housing should not be a welfare. Leung argues public housing for a government is not an asset but a liability: if the government, as the landlord, cannot satisfy the residents of the public housing who are the tenants, the residents will form power and oppose the government. The

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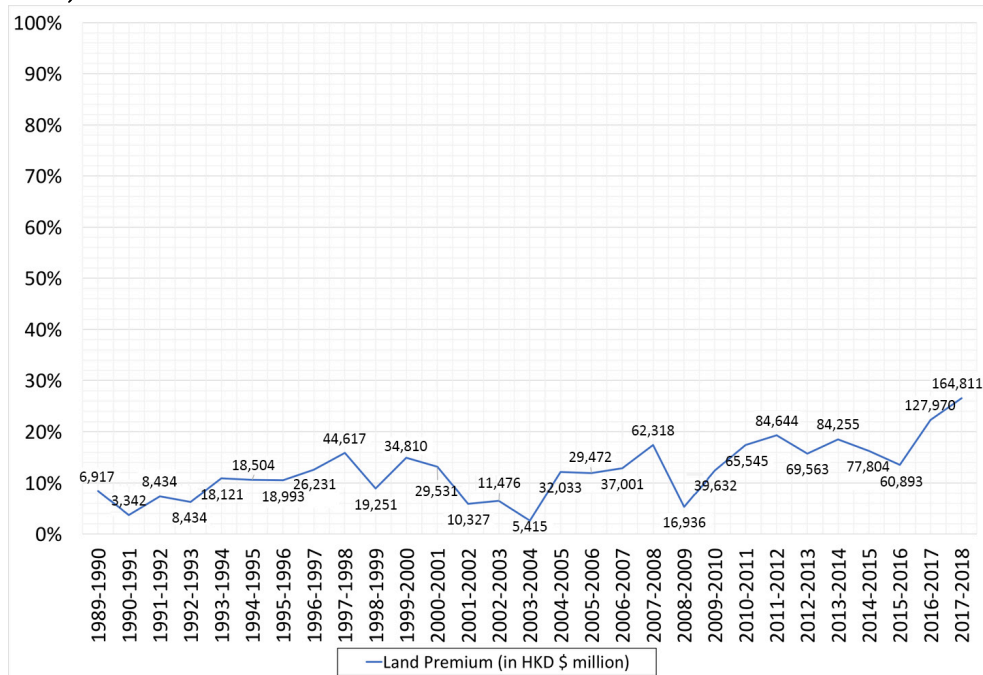
<sup>8</sup> NPC refers to the National People's Congress. CPPCC refers to the Chinese People's Political Consultative Conference. They are both part of the governing body of China.



achievement of a city, in his view, relies on the hardworking residents and, if the land revenue is spent on infrastructure, it implies that the private property owners are those who actually pay for the public works (Guangdong Provincial Committee of the Chinese People's Political Consultative Conference, 2015; Leung, 1989; Shanghai Party History Research Center of the CPC, 2018). In other words, this model of urban development tends to exclude the non-owner inhabitants, while emphasising the importance of the private developers and urban elites.

The empirical data of public finance can illustrate these consequences. The colonial and SAR governments have been massively investing in infrastructure by making use of the land premium deposited to CWRP (Figure 1). Figure 2 presents the expenditure spent on different categories of capital works projects in the last years of the colonial period. Some new categories, such as computerisation and port and airport development, were created to fulfil the social needs. The SAR government still follows this categorisation, which does not reflect the reality of usages or meet the social needs (Figure 3). For example, there is still a category named housing, which was allocated for public housing in the colonial period. However, public housing is no longer funded by the SAR government, and the detailed items currently listed in this category show this category of housing is for some government office buildings. After the sovereignty transfer, investment in highway has been continuously increasing and is now the largest expenditure. Under this category head, the majority of the items is not the road that mediates our everyday mobility, but mainly the cross-boundary infrastructures. It has been an explicit objective of constructing these megaprojects to facilitate spatial integration with China (Fong, 2017; Yang and Li, 2013; Yeung, 1997). These megaprojects include the Express Rail Link and Hong Kong-Zhuhai-Macao Bridge. These megaprojects were not initiated by the SAR government, but the Chinese central government which was directly involved in coordinating these constructions (Yang, 2006). The spatial effect of these megaprojects is to strengthen the territorial integrity between Hong Kong and China. Pang's (2018) research on the activities of Chinese state capital in Hong Kong shows that these megaprojects were hugely beneficial to the Chinese enterprises by granting the construction contracts to them, providing the capital to China for implementing its national and geo-political strategies, including One Belt One Road.

**Figure 1 Proportion of land premium in total government revenue (1990-2018)**

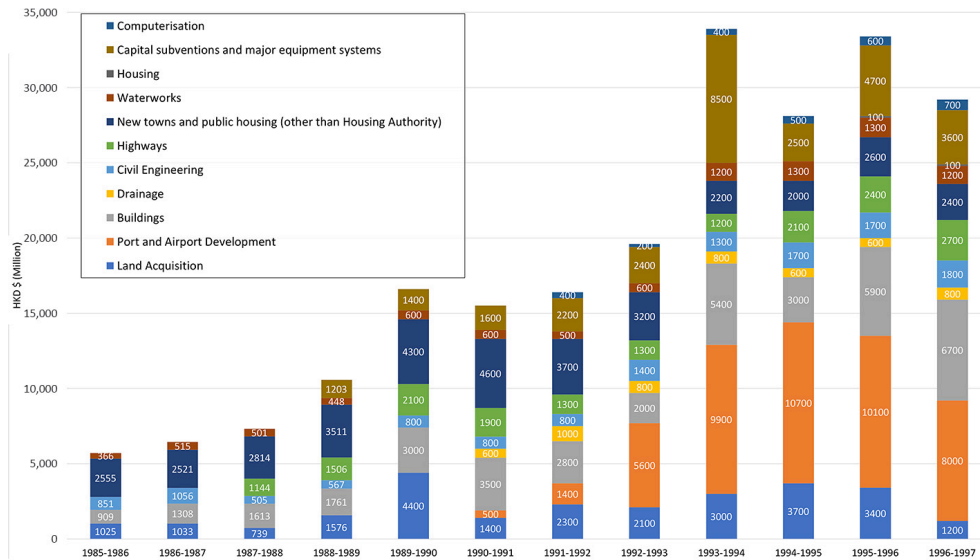


**Note:** The land premium before the sovereignty transfer was equally shared by the Colonial Government and the future government, and the figures presented did not include the latter

**Source:** Census and Statistics Department, Hong Kong Special Administrative Region Government

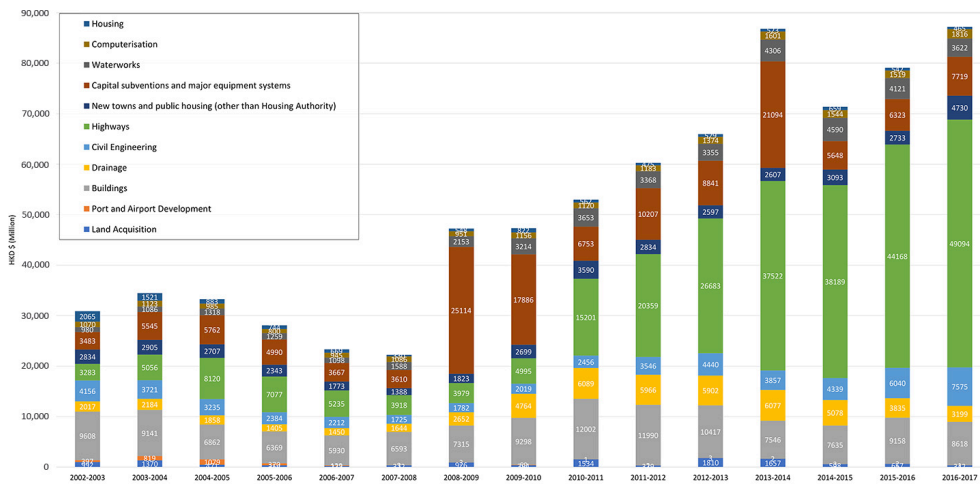
The case of Express Rail Link can further explain the spatiality of property jurisdiction. The co-location arrangement is to establish a joint checkpoint in the West Kowloon Terminal. A part of the Terminal is leased back to the Chinese state, and thus, Hong Kong's jurisdiction over that part at the heart of the city is taken away. Although this arrangement did not have sufficient and clear legal basis, it was approved by the Legislative Council because of the existing legislature system, which by nature is dominated by the pro-establishment camp. One needs to note that this co-location arrangement is not as usual as its defenders claim. The defenders often cited the Eurostar and the US control points set up in Canada to justify that the practice of legal enforcement in another jurisdiction under such circumstances is a norm. However, these examples are different than the case of Hong Kong. In these foreign examples, only those laws relating to the clearance procedures would be applied to the local jurisdiction. In the co-location arrangement, the issue at stake is that the whole territory of the joint checkpoint and train platforms was taken away from the jurisdiction of Hong Kong. The government defended that this was because it was impossible to distinguish, which laws are related to clearance procedures.

**Figure 2 Projects expenditure of the Capital Works Reserve Fund by category (1986–1997)**



**Source:** Annual Report of the Director of Accounting Services, Hong Kong Government

**Figure 3 Projects expenditure of the Capital Works Reserve Fund by category (2003–2017)**



**Source:** Financial Statements of the Government of the HKSAR, The Treasury, Hong Kong Special Administrative Region Government

Implications of the co-location arrangement can be discussed with two observations about the jurisdictional relations between Hong Kong and China. Firstly, following the new constitutional order, and especially the Basic Law, which articulates an understanding that the land in Hong Kong is state property, which is licensed out to the SAR government, the then Secretary for Justice Rimsky Yuen justified the co-location

arrangement for “there’s no problem with a landlord renting a room from a tenant” (Sum, 2017). Yuen added that “Beijing is the landlord and Hong Kong is its tenant” and the tenant “has the power to rent out the room”. This has reduced the complexity of sovereignty and territory into a simplified economic narrative of property. Secondly, it reveals the spatiality of sovereign power. On the surface, this arrangement leads to the situation that there is a jurisdictional territory, which cannot be governed by the SAR government situated in Kowloon<sup>9</sup>. During the 20 years after the sovereignty transfer, the Chinese sovereignty was still not completely accepted by the Hongkongers. What has been witnessed in recent years is that the Chinese Government spent many efforts, including the White Paper as mentioned, to enhance their influences in Hong Kong to strengthen the legitimacy of the Chinese sovereignty. However, nothing is more powerful than producing a relational space that highlights the complete jurisdiction. From the perspective of China, Hong Kong is located at the periphery of the country. The political and ruling state power extends from the centre to the periphery through the highspeed railway network. Looking from the side of Hong Kong, the boundary between Hong Kong and China that was originally located at the periphery of the territory of Hong Kong, has suddenly moved to the city centre, resulting in the rising awareness of the existence of the Chinese sovereignty. This has fundamentally conceived a spatial imaginary about the OCTS as it is concretely controlled by the ruling power and materialised in the everyday spatial practices through boundary alienation.

## **Concluding remarks**

Social scientists often propose new categories or name their observations and ideas with labels. This is, without any doubts, important for developing a language or a set of vocabulary to generate productive conversations. However, sometimes critiques would question why the new terms are valuable and irreplaceable. As some concluding remarks, it is appropriate to briefly summarise what the concept of property jurisdiction can add to the scholarship of Hong Kong studies. Extending the conception of Hong Kong as property state to property jurisdiction continues to highlight the reliance of the public finance and the economy on land property and real estate, and beyond this, the extended conception as jurisdiction, in both senses of territory and exercise of power, can capture the political reality of Hong Kong under the new constitutional order imposed by the Chinese sovereignty for prosperity

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<sup>9</sup> This is similar to the Kowloon Walled City where the Qing insisted on stationing some officials in this place for symbolising their sovereignty in the territory that was leased to the British.

and stability. The usefulness of this conceptual extension is that it helps us to consider the land question of Hong Kong in a wider context of OCTS – for example, probing the geopolitical economy of real estate, which brings benefits to China, the infrastructure and megaprojects controversies in relation to the Greater Bay Area development plan of regional integration, and the territorial integrity claim made by China. In addition to the insights to legal geography, this conception of property jurisdiction highlighting the relations between cities and polities also contributes potential conceptual discussions to comparative studies of cities and territorial autonomies.

Although this short article does not allow much space to draw on many concrete examples, the conceptual discussion of property jurisdiction and its interpretation of some public finance data and megaproject cases create some avenues to advance Hong Kong studies. Future analysis can decipher the property and real estate market of Hong Kong. Specifically, one may ask whether the developers and investors from China are willing to dominate the property market in Hong Kong, and this is relevant to understanding the multiple meanings and practices of property relations. Moreover, as real estate development is supported by many associated industries and eventually impacts every aspect of the society, researchers on property jurisdiction might widen the focus to investigate the consequence of the new constitutional order on the social transformation through the property lens. Further research can also conduct closer empirical studies to explore the jurisdictional relations, including the mechanisms and actors that maintain and stabilise the relations. More case studies of the megaprojects and the regional planning and development initiatives can serve this purpose, asking how the urban governance of Hong Kong has reinforced the new constitutional order.

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