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ARTICLE

One Country, Two Systems, Multiple Speeds: The Temporality of Sino–Hong Kong Juridical Borders

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***Abstract**: Hong Kong's jurisdictional status is contested by the imposition of the National Security Law onto the city by China, thus challenging its constitutional principle of "One Country, Two Systems" which grants the autonomous region an independent judiciary for 50 years. Juridical bordering between a sovereign state and its autonomous region has been insufficiently researched due to the state-centric nature of legal discourse which limits the discussion of agency in non-sovereign jurisdictions. In addressing the concept of time in non-sovereign jurisdiction within the Sino–Hong Kong context, this article deploys legal discourse analysis to examine official documents from Hong Kong, China, selected common law jurisdictions, and the United Nations to substantiate Hong Kong's meaning and multiplicity as a temporal jurisdiction with an expiry date. This article suggests that the bordering process of Sino–Hong Kong juridical borders is discursively constructed at various speeds by regional, national, and international non-human agencies.*

***Keywords:** Temporality; Jurisdiction, Bordering; Hong Kong; China; British colony*

Introduction

The presupposition of territoriality is the basis of discussions on juridical borders. Scholarly debates on jurisdictions have primarily focused on territoriality instead of temporality.

Hong Kong is jurisdictionally separate from the People's Republic of China (PRC) yet falls under its sovereignty. Its Special Administrative Region (SAR) status has been continuously contested since its establishment owing to the evolving nature of its constitutional document, which itself stemmed from an international treaty with different interpretations.

Ruled by the British Empire since 1841, sovereignty over Hong Kong was transferred from the United Kingdom (UK) to the PRC in 1997, turning the city from a British dependency into a Chinese-controlled territory. This transfer of sovereignty not only ended the UK's Commonwealth jurisdiction, but also transformed the city into the Hong Kong Special Administrative Region (HKSAR). This official status, set to expire in 2047, is codified in the Hong Kong Basic Law (HKBL) constitutional document which also established its Court of Final Appeal (CFA) as independent from the PRC's judicial oversight. In response to the 2014 Umbrella

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Movement in which protesters demanded electoral reforms, and the 2019 Anti-Extradition Protests which opposed the Sino–Hong Kong extradition agreement, the PRC extended its jurisdiction over the HKSAR. It did so by establishing a National Security Office in the autonomous region under the PRC-imposed Hong Kong National Security Law (HKNSL), further essentializing the temporary nature of the Sino–Hong Kong juridical border.

Presupposing the time-bounded nature of the HKSAR's political and legal systems, this article seeks to conceptualize the imposition of the HKNSL as a moment of change in the meaning of "juridical border", offering a theoretical contribution to the study of border temporality.

Adapting Little's concept of "complex temporality" of borders as a political theory, this approach, in contrast to what Little and other scholars have identified as "territorial epistemology", states that bordering practices change at an "uneven tempo" under the influence of different social and political forces over the course of time (2015, 430–31). Hence, juridical borders in the Sino–Hong Kong context, in terms of border temporalities, can be understood as multiple realities among regional, national, and international actors, each interpreting the "One Country, Two Systems" principle in distinct ways.

The existence of the HKSAR for the period of 1997–2047 is actualized, as noted above, by the HKBL, a constitutional document which was itself the product of the Sino–British Joint Declaration (United Kingdom of Great Britain and Northern Ireland and China 1985), and enacted by the National People's Congress (NPC), the Chinese legislative body. The ongoing contestations between the "Two Systems" stems from Hong Kong's capitalist system adhering to the doctrine of the separation of powers with an independent judiciary, whereas the Chinese socialist system has a supreme unit to oversee its governance, legislature, and judiciary.

Temporality, as a whole, is defined as the "differentiated experiential basis of the movement of time" which affects political actors (Little 2015, 432). To conceptualize the temporality of juridical borders, this article analyzes selected Chinese and Hong Kong legal discourses to understand the discursive construction of the Hong Kong judiciary after the implementation of the HKNSL in 2020. Drawing on statements, speeches, and reports from the Hong Kong Judiciary, Chinese officials, the CFA's non-permanent judges from other common law jurisdictions, and the United Nations, this discussion adapts Fairclough's (2013b) approach to critical discourse analysis to show how the current state of Hong Kong's jurisdiction has been problematized by these stakeholders. This approach seeks to explain the relationship between the discourse of the HKNSL and its implementation, thereby unpacking the characteristics and implications of different bordering practices constituted by domestic, national, and international legal norms in the Sino–Hong Kong context.

Borders as Perspectives for Jurisdictional Contestations

Borders are not merely lines being found on the edges of sovereign states, but they are also "located" in broader social practices and discourses all around societies (Paasi 2009, 215). They depict a "dynamic process of differentiation in perceptions and identity constructions" facilitated by the social production of the border (Brambilla 2014, 8). Social practices "exist in the realm of discourse, they are *representations* of approved behavior" within borders (Ford 1999, 855). The realm of discourse is reflected in the understanding of territorial jurisdiction as simply administrative districts which consist of distinctive social groups, as hypothesized by Ford (1999, 854).

Borders, as markers of the exertion of power, accentuate contestations of territorially bounded administrative units managed by governments. In their review on selected conceptual issues in border studies, Kolossov and Scott (2013, 13.40) stated that there was an observable paradigm shift from a "borderless world" to more territorially bounded, securitization-focused practices of re-bordering and fencing. The re- and de-construction of borders is dynamic, as they consist of "constantly moving space that is created, maintained and/or dismantled through entanglements with human and non-human lives and things" (Ozguc and Burridge 2023, 473). Non-human lives and things, as Ozguc and Burridge (2023) argue, rather than being politically passive, have agency to act.

"The concomitant power to sort people", as noted by Kolossov and Scott (2013, 5.12), according to their affiliations to ethnic, cultural, political, and social groups, is best illustrated by the ongoing conflicts over Russian-Ukrainian and Israeli-Palestinian borders. They further argue that there is an increasing division of legal space between regions and cities, and moreover that "the world economic system depends on [this] division of space" (Kolossov and Scott 2013, 6.18). Despite the emergence of different forms of borders such as digital borders, they are inevitably connected to national and/or international authorities who have the "power to sort" within a virtually/physically bounded area (Pötzsch 2015).

The bounded nature of space creates contestations between unequal jurisdictions within a sovereign state, constituting a site of struggle within their power structures. Brambilla and Jones (2020, 3) identify borders as "paradoxical structures", a substantive way of characterizing their spatiality, which simultaneously serve as a tool to give power to the political-juridical orders of

the modern nation-state, and as "a field traversed by resistance struggles". These paradoxical structures help understand better the ambiguity of defining a "jurisdiction" and provide a basis from which to view juridical bordering as the process of re-drawing boundaries between jurisdictions.

One way of understanding the temporality of juridical bordering is by acknowledging the uneven paces of juridical bordering practices. The uneven paces of these practices are best illustrated by the concept of "borderscape". This concept underlies problematization of the multiplicity of power dynamics by accidental social forces and deliberate political actions, resulting in the re-interpretation of the border as "not only a site of production of sovereign power but also of resistances and struggles" (Brambilla and Jones 2020, 3).

In addition to problematizing the spatiality of borders as the source of dispute between jurisdictions, Little's (2015) concept of border temporality also helps unpack the nature of juridical borders. Assuming the existence of multiple and intersecting temporalities, the conception of time can be understood beyond linearity. To unveil the complexity of temporality, a non-linear approach "highlights the disorderly pattern and uneven tempo" of political change which can be exemplified in the material world (Little 2015, 431). The concept of border temporality emphasizes the plural, contradictory nature of the past, and how it can persist in the present to "shape the forms and meanings of borders" (Pfoser 2022, 570).

The bounded thinking of borders is linked to the understanding of jurisdictions. The matter of the legitimacy of competent authorities to act upon bounded virtual and/or physical spaces remains connected to bordering practices. Bordering, in a legal sense, acts upon the differences between one legal authority and another. Cooperation between jurisdictions also creates disagreements about the limit of one jurisdiction over the other, and how local, national, and international jurisdictions overlap, if not clash, with one another.

Jurisdiction Beyond Sovereignty

Jurisdiction refers to "the legitimacy of any resulting judgement" in both normative and sociological terms, which is a "predicate for moving forward in adjudication" (Lee 2002, 1622, 1628). To expand the concept of jurisdiction, one can interpret it beyond a sovereign state's right to regulate its citizens within the territory under its full control. The overlapping nature of regional, national, and international authorities in terms of their jurisdictions, together with questions of territoriality, borders, and legitimacy, further problematize the nature of jurisdiction itself. Given the complexity of the concept, scholars in different fields of international relations, linguistics, and legal studies have divergent understandings of the sources of power that constitute a "jurisdiction".

One conventional understanding of a jurisdiction is that it is territorially bounded: all individuals are subject to a set of laws within a clearly defined territory (Vaughan-Williams 2008, 323). Similar to a form of ordering, governmental institutions are responsible for exercising legal powers as set by the law. With laws that legitimize the authorities to exercise their power over their legal subjects, the emergence of jurisdiction "produces political and social identities" of individuals (Ford 1999, 844).

From the perspective of international law, jurisdiction stems from a sovereign state's competence "to regulate the conduct of natural and juridical persons" (Crawford 2019, 440). As a starting point to understand jurisdiction, Crawford (2019, 456) also gave an overview on how one can deploy the concepts of prescriptive, enforcement, and adjudicative jurisdiction; they respectively refer to the power of the state to make rules, take executive action in pursuance of rules, and take judicial action in pursuance of rules.

While the presumption of jurisdiction for criminal acts is primarily territorial, the nationality principle asserts that the concerned individual over "whom the state purports to exercise its prescriptive jurisdiction must have been a national at the time of the offence" (Crawford 2019, 444); alternatively, the effects doctrine adheres to extraterritorial offences which may cause harmful effects in the prescribing state. As Crawford (2019, 444) explains, because a natural or juridical person may be regulated by states more than once, the territorial and nationality principles create parallel jurisdictions which result in many states' emphasis in limiting the nationality principle to avoid double jeopardy.

The linguistic perspective, however, reckons jurisdiction as the result of legitimizing the force of law by using language through empirical and hermeneutic ways (Richland 2013, 211). The etymology of the word "jurisdiction" is a combination of the Latin "law" (*juris*) and "speech" (*dictio*) in reference to the performative character of legal speech (i.e., speaking the law) and the ideational content of law's speech at the same time (Benveniste 1973). Following the notion that legal speech "speaks" the law, it is the legal language that constitutes the scope and force of law, presupposing the power of legal institutions by bringing them into existence.

To understand law as a space-time entity to exercise social power, legal actors make intertextual and interdiscursive moves to point to the pre-existing language of a law "by virtue of reanimating them in the present legal language moment of use" (Richland 2013, 219), and to ensure the mediative force of law will operate in the future.

The complementary elements of the concept of jurisdiction lie in its extraterritorial aspect and its relation to sovereignty. Protective jurisdiction, as one of the recognized principles of extraterritorial jurisdiction, complements a state's sovereign right to exercise authority "over everything and everyone found on its territory" Lam and Qin 2022, 117). The justification of this protective principle is state-centric. Its *raison d'être* stems from a state's need to protect its interests, given that international law fails to ensure all states protect the vital interests of all other states. In contradiction, Lam and Qin (2022, 130.23) also state that when there is no prohibitive rule, international law would permit a state to prescribe rules to apply extraterritorially, though the prescribing state cannot enforce its laws in others' territories without a permissive rule (Lam and Qin 2022, 121). The emphasis of the protective nature of a legal jurisdiction problematizes the juridical reach of non-sovereign jurisdictions which do not necessarily adhere to their respective sovereigns' jurisdictions.

The Evolution of Sino–Hong Kong Juridical Borders Since the Cold War

The pace of change of Hong Kong's institutionalized autonomy continues to evolve over time due to the open economy and free market principles established under British administration. Gradually formalized during the Cold War period, Hong Kong's judicial system was similar to the common law system in place before the 1997 handover (Choi and Lee 2017). After the transfer of sovereignty in 1997, power dynamics between the Chinese and Hong Kong legislatures have changed in such a way that the NPC has partially overridden the function of the Hong Kong legislature. In 2020, for the first time since the handover, the NPC imposed national security legislation directly onto Hong Kong without oversight by the city's own legislature, the Hong Kong Legislative Council.

The HKSAR is a common law jurisdiction separate from Chinese civil law jurisdiction. Although the PRC's sovereign rights over Hong Kong were granted by the 1997 handover, there is a constant struggle in balancing the "One Country" and "Two Systems" enshrined by the Sino–British Joint Declaration signed in 1984. The doctrine of "One Country, Two Systems" is the most problematic element of the Joint Declaration; it produces a conflictual phenomenon between Hong Kong's temporal system and the PRC's permanent system. According to the declaration, Hongkongers are to administer the city with a "high degree of autonomy" unchanged for the 50 years between 1997 and 2047 (Tu 2019). As a preparation for formalizing the status of Hong Kong after the 1997 handover, the NPC accepted the Hong Kong Basic Law's final draft in 1990, to be brought into effect after the handover. The HKBL, as the Hong Kong Court characterizes it, is not only "a brainchild of an international treaty" (Tu 2019), but also the PRC's national law and the HKSAR's constitution.

While Hong Kong's CFA has the power of final adjudication, the National People's Congress Standing Committee (NPCSC), the permanent body of the Chinese legislature, has the constitutional right to interpret the HKBL, as the region's living constitution gives "no methodological guidance on how it should be interpreted" (Ip 2016, 582). The implementation of the HKNSL in 2020, however, shows that the PRC's jurisdiction has gradually limited the CFA's jurisdiction in the HKSAR since the 1997 handover. Up until 2023 the PRC extended its jurisdiction over the HKSAR through new national agencies, electoral reforms, and institutionalization of the HKNSL across different sectors. The temporal limits of Hong Kong's constitutional document lead to the delimitation of a likewise temporal Sino–Hong Kong juridical border.

The point of departure for understanding Sino–Hong Kong borders can be simplified to the differences between the *de jure* separation of power (executive branch, legislature, and judiciary) and the PRC's centralization of power vested within the Chinese Communist Party. For the Hong Kong judiciary, while the notion of separation of power is not absolute, the common law-based principle rests upon the CFA as a constitutional check on the executive and legislative branches of government. The PRC, however, adheres to the concept of law-based government in which the governed are supposed to obey orders issued by governors (Clift 2020, 14) who are part of the leadership of the Chinese Communist Party. This is "the defining feature of socialism with Chinese characteristics" (Constitution of the People's Republic of China 2018).

Before the Chinese-imposed HKNSL was implemented, the judiciary in Hong Kong was to a large extent independent, as its CFA was granted the power of final adjudication by the HKBL. While the NPCSC had the power to interpret the content of the HKBL at its will, such an exercise of sovereignty was rarely used to avoid weakening Hong Kong's "High Degree of Autonomy" as enshrined by the Sino–British Joint Declaration and, subsequently, international recognition of the HKSAR as a global financial centre which externally enforced the principle of the rule of law. Prior to the HKNSL's imposition in 2020, the NPCSC's interpretation of the city's Basic Law had already shown its supremacy over the CFA's power of final adjudication. Since the introduction of the HKNSL, the NPC's interpretation of the HKBL has, moreover, further demonstrated the vertical constitutional relationship between the PRC's Constitution and the HKBL (Feinzig 2021, 126–28).

In a 2011 court case involving the Democratic Republic of Congo and Chinese-held companies on the matter of state immunity, the CFA issued a direct solicitation

to the NPC to ask whether the HKSAR Courts have jurisdiction over determining the rules of state immunity. As a response, the NPC, for the first time, issued an interpretation of the HKBL not only based on its decision before the 1997 handover retrospectively, but also cited PRC constitutional provisions other than the ones directly related to the establishment of a Special Administrative Region (Feinzig 2021, 142–43). This ruling marks a distinguishable point along the arc of what had been gradual juridical change: the substantive legal precedents of Hong Kong's common law system were being replaced by the Chinese legal system's reasoning based on its original legislative intent. The NPCSC made it clear that it is the only organ to decide and judge whether Hong Kong's laws are consistent with its overarching Basic Law.

Given the temporal nature of Hong Kong's constitution (i.e., the HKBL), the imposition of the HKNSL has further limited the scope of Hong Kong's jurisdiction by altering the nature of Hong Kong's judicial system. According to Article 47 of the HKNSL, instead of following the common law tradition wherein the Hong Kong Court determines whether a case is related to national security, the Hong Kong Chief Executive, a representative of the NPCSC, certifies whether a suspect's act has involved national security matters (Chan 2022, 11). By depriving the Hong Kong Court of their prior jurisdiction in determining the nature of suspected national security cases, the process of juridical bordering began with the HKSAR government's institutionalization of national security legislation, further expanding the PRC's jurisdiction over the region.

Contested Hong Kong Jurisdiction

The design of Hong Kong's judicial system illustrates the problem of state-centric juridical borders. As an implementation of the Sino–British Joint Declaration, the HKBL was officially promulgated in 1990 by the PRC's legislature to codify Hong Kong's SAR status with its own judicial system separate from the PRC. In addition to Chinese national legislation and customary law, the HKBL is the main source of law in Hong Kong, and is supplemented by the statute law passed by the city's own legislature, as well as its common law, rules of equity, and international law. The multiplicity of legal authorities illustrate the hybrid nature of the Hong Kong Court's adjudicative power, resulting in a problematic juridical boundary between the CFA and the NPCSC. On the one hand, the CFA does not have adjudicative power over matters related to foreign affairs and defense, while on the other hand it remains the final adjudicative authority in the HKSAR.

Prior to the implementation of the HKNSL, the Sino–Hong Kong juridical limits were bound by an act of the state; that is, that acts performed by a state within its own territory are not open to challenge or adjudication by a national court of any other state (Ip 2016). The CFA has the power of final adjudication free from Chinese intervention as long as it does not act upon foreign affairs or defense matters. After the implementation of the HKNSL, however, the PRC's establishment of a National Security Office which is not subject to Hong Kong's laws, as well as the introduction of a number of HKNSL provisions which empower local law enforcement and executive branches, further complicate the matter. With this institutional set-up, the PRC's jurisdiction over the HKSAR has been spatially occupied both through the physical presence of the National Security Office and its Chinese staff, and by the exemption of this Chinese staff from the Hong Kong Court's jurisdiction. In effect, these encroachments have further delimited the Sino–Hong Kong temporal borders.

Analysis of Chinese and Hong Kong Legal Discourses

The Chinese juridical bordering of Hong Kong through PRC-imposed legislation demonstrates a discursive turn in the political decisions which have driven the PRC's new policy approaches to Hong Kong, and to the interpretation of its SAR status. Taking juridical bordering as a social process, the emergence of a legal discourse within Hong Kong concerning the safeguarding of Chinese national security is noteworthy. This discursive shift requires an examination of the relationship between the language used by Hong Kong and Chinese officials in matters related to HKNSL and the law's implementation.

Discourses, according to Fairclough, are semiotic ways of construing aspects of the physical, social, or mental world; discourse is used to make meaning of elements of social processes, placing them in a dialectical relationship (Fairclough 2013b, 9, 11). Critical discourse analysis, in Fairclough's methodology, is an analysis of the above definition of discourses in order to understand the relationship between semiotic and other social elements. As part of normative and explanatory critique, this version of social analysis evaluates existing realities and seeks to show how these realities are affected by social structures (Fairclough 2013a, 19). The understanding of social processes as the interplay between social structures, practices, and events (Fairclough 2013b; Chouliaraki and Fairclough 1999) focuses on the relationship between structure and action, thereby explaining how discourses are "put into practice" (Fairclough 2013b, 190–92). Focusing on a "practical argumentation" (Fairclough, 2013b, 193), this approach of discourse analysis is suitable for the problem-solution character of legal discourse, enabling the existing state of affairs to be problematized and solutions identified.

Critical discourse analysis is therefore a vital framework with which to unpack the meanings of discourse

concerning Hong Kong's jurisdiction following the PRC's introduction of the HKNSL, and to explain the relationship between the language associated with it and its implementation. The following discussion examines official statements from key stakeholders—the CFA, the NPC and its Hong Kong-based Chinese government representatives, overseas non-permanent judges, and UN human rights experts—collected between May 9, 2020, and July 4, 2023. These dates mark the first time the Hong Kong Liaison Office, the Chinese Central Government's representation in Hong Kong, mentioned the need to implement a national security law in Hong Kong (Davidson 2020), and the date on which the Hong Kong Police Force issued the first round of international bounties for eight Hong Kong dissidents living overseas (Hong Kong Police Force 2023).

Fairclough's critical discourse analysis approach is applied below to illustrate how the existing state of affairs concerning Hong Kong's jurisdiction under the HKNSL is represented by the HKSAR and the PRC simultaneously, how this representation is problematized, as well as the underlying value of judicial independence that underpins and impacts it. This analysis aims to conceptualize Sino–Hong Kong juridical borders for a better understanding of how discursive power is transformed into action.

The CFA in Hong Kong serves as the highest judicial authority with the power of final adjudication in legal cases. It is composed of a permanent judge located in and originating from Hong Kong and up to 30 non-permanent judges located overseas in other common law jurisdictions (Hong Kong Court of Final Appeal 2023), namely the UK, New Zealand, Australia, and Canada. Consequently, the jurisprudence of Hong Kong is shaped by the legal culture from those jurisdictions, as the Hong Kong common law system adheres to the principle of precedent in which the adjudications of prior comparable legal cases must be applied to the comparable cases which follow. Despite the foreign nature of the overseas judges, local legislation stipulates that both overseas and local judges have equal say in the outcome of any appeal (Fok 2017a, 7.19). The HKSAR's jurisdiction, albeit officiated by the Chinese Constitution, shows Anglocentric features due to Hong Kong's legal culture. Its judicial independence has been vocally defended by both permanent and non-permanent judges active in Hong Kong, and simultaneously opposed by mainland Chinese judges (Fok 2017a, 2.5).

The Partial Independence of Hong Kong's Judiciary

From the CFA's online database, I have selected six speeches delivered by permanent judges between 2017 and 2021 according to their relevance to the Hong Kong judges' understanding of jurisdictions and judicial independence. The initial audience of these speeches were international judges, lawyers, and law students at the Commonwealth Law Conference, Asia Pacific Judicial Colloquium, International Bar Association's Annual Conference, and the University of Hong Kong. An additional three speeches delivered prior to 2017 were also selected for critical discourse analysis to give a comparative overview of how Hong Kong's judges perceived judicial independence before and after the 2020 HKNSL was imposed.

The Sino–Hong Kong discursive border was shaped by differences in values and understandings of judicial power, and its independence from external political influences, prior to the HKNSL. In a speech delivered by Lord Phillips, a non-permanent judge of the CFA, he highlighted the importance of the separation of powers within the structure and role of the UK Supreme Court and that the CFA be associated with it (2013, 1). The association between the Hong Kong CFA and the UK Supreme Court, and their subsequent shared understanding of the separation of power between judiciary, legislature, and executive branches, has been shown by the presence of UK non-permanent judges. A permanent judge of the CFA, Joseph Fok, also pointed out in 2017 that the stark difference between the judicial systems of Hong Kong and China was evident in a statement by the President of the Chinese Supreme People's Court who described the notions of judicial independence and separation of powers as "erroneous" (Fok 2017a, 2.5). The conflicting understandings of the separation of powers and judicial independence between the Hong Kong judiciary and the mainland Chinese judiciary paved the way to the later contestation between Hong Kong's mini-constitution and the 2020 HKNSL.

Hong Kong's judicial independence has limitations by design due to its inherent lack of sovereignty. In another speech, Fok (2017b, 3.6) noted that, as a non-sovereign authority with the right of final adjudication, the CFA faces limitations on its judicial power: the right of final adjudication is not equivalent to the act of a sovereign state. Following the principle of comity, should a jurisdictional dispute arise between courts, a mutual respect of these courts for one another is required for territorial integrity. When laws of one jurisdiction are applied to the property of another state, respect for territorial sovereignty of the concerned state should also be exercised. For common law jurisdictions, a foreign judgement can only be recognized and enforced if it is to be converted into a local judgement of the home court (Fok 2017c, 18.54).

The enactment of the HKNSL in 2020, however, led the CFA's then-Chief Justice, Geoffrey Ma, to react by clarifying some general principles of Hong Kong's judiciary (Ma 2020a, 1). Only two days after the HKNSL's annexation into the HKBL, Ma clarified the principles of designating judges and how cases would be handled in the Hong Kong Court under the new security law. While the legislation was passed in the NPC and therefore vested

with state power, he emphasized that "judges should not be designated on the basis of any political considerations . . . this reinforces the principle that in the handling or determination of any legal dispute, only the law and legal principle will be considered" (Ma 2020a, 1, 2).

Despite political pressure imposed by Hong Kong-based Chinese governmental representative offices, the CFA remained as impartial as the HKBL allowed in order to distance themselves from the political implications of the HKNSL. The inclusion of judges of foreign nationality also meant that the adjudication of national security-related cases would be permitted, theoretically, by non-permanent judges from other common law jurisdictions. Whilst the Chinese government has signaled the supremacy of the NPCSC's power of interpretation of the HKBL over that of the CFA, the Chief Justice highlighted that "in considering the suitability of judges to be designated, any legal objections will have to be taken into account, such as those set out in Article 44 or any objections based on bias or reasonable perceptions of bias or other legal objections" (Ma 2020a, 2.4). The misalignment between the PRC-imposed security law and the HKBL have been visible from the first HKNSL-related statement issued by Hong Kong's highest court (Ma 2020a, 1.1). This juridical boundary rests upon the differentiation between a non-state legal power and a national law issued by the sovereign political force representing the government.

The Sino–Hong Kong juridical borders also concerned the principles of administration of justice in Hong Kong. In response to critiques against the Magistrates' Court's decision to convict or acquit defendants and the granting or refusal of bail, Chief Justice Ma referred to Hong Kong's mini-constitution as the legal document to "ensure the implementation of the PRC's basic policies regarding Hong Kong" (Ma 2020b, 1.2). The HKSAR's political structure was also mentioned in his speech as he refrained from commenting on the political nature of the HKNSL. To emphasize the CFA's judicial independence from the Chinese national security agenda, he cautioned that "it is no part of the courts' function to determine . . . political controversies, to promote any political viewpoint, or to adjudicate in accordance with any mainstream media or public opinions" (Ma 2020b, 3.6).

In the legal discourse of the Hong Kong judiciary, the HKNSL was constructed as a politically neutral legislation only on national security matters. Chief Justice Ma insisted it must be a legal, not political, question as to which legal principles would be applied, that "only judges designated by the Chief Executive under Article 44 of the National Security Law" can adjudicate these cases, and that judges must not be influenced by political bias or considerations (Ma 2020b, 14.23). The NPCSC's jurisdiction over the HKNSL, however, was a political decision aiming to safeguard Chinese national security and exercise full sovereignty over the HKSAR. The stark difference between the Final Court's apolitical approach towards national security matters and the NPC's sovereignty-oriented approach shows that Hong Kong's jurisdictional separation from the PRC is not necessarily a determined legal reality, but rather a disorderly socio-political reality subject to the PRC's degree of self-restraint in controlling Hong Kong directly.

As the Hong Kong CFA's Chief Justice Andrew Cheung spoke on the rule of law at the Ceremonial Opening of Legal Year 2022, he implied the limited jurisdiction of the Hong Kong Judiciary over interpreting national security-related offences. He likewise referred to the apolitical role of CFA judges, stating that any comments on the HKNSL or its operation would be "extra-judicial", noting that "it is of course not my role as Head of the Judiciary to make extra-judicial comments on the law or its operation" (Cheung 2022, 2). In a rare reference, the Chief Justice called out the Hong Kong government by indicating that they are equally accountable to the law and must operate within it (Cheung 2022, 1). This understanding of the government's accountability to law shows some degree of the resistance of Hong Kong's Judiciary against the NPC's centralization of power. While the judiciary attempted to administer justice without recognizing national security cases as examples of political prosecution, the NPC highlighted the NPC's supremacy over Hong Kong's legislature (Guo et al. 2020, 166), hence creating dynamics of simultaneous maintenance and elimination of Sino–Hong Kong juridical borders.

The Hong Kong Judiciary has emphasized that although court decisions may have political implications, that does not mean that the Judiciary has been involved in the formulation or reversal of Hong Kong government policy. In 2023, when Chief Justice Andrew Cheung delivered a speech at the Ceremonial Opening of the Legal Year, he defended the independence of the judiciary and explained that all judges can only "faithfully apply"(Cheung 2023) the HKNSL as the Judicial Oath required. Given the supremacy of the NPCSC as both legislature and a Chinese political organ, it effectively binds the jurisdiction of the Hong Kong Courts and hence re-borders the Chinese jurisdiction over that of Hong Kong.

Chinese "Comprehensive Jurisdiction" over Hong Kong

The process of the PRC's discursive re-bordering of Hong Kong's jurisdiction began in 2014. The doctrine of Chinese "comprehensive jurisdiction" over Hong Kong was stated in a white paper published by the Chinese State Council (Clift 2020, 4; State Council Information Service 2014, 3.2), but did not immediately amend Hong Kong's constitution. It was, however, materialized six years later by the Chinese legislature's implementation of the HKNSL in response to the 2019 Anti-Extradition

Protests. It has since effectively changed the Sino–Hong Kong juridical border in accordance with a new understanding of the "One Country, Two Systems" principle which defines Hong Kong's independent judiciary.

The end of China's Thirteenth National People's Congress came with a new stage of re-constructing the nature of Hong Kong's temporal jurisdiction. The NPCSC issued an explanation of the NPC's draft of their HKNSL decision in which the representative cited the necessity and importance of safeguarding Hong Kong's security at the national level (Wang 2020). The explanation illustrated that the NPC and NPCSC had the authority to issue a decision, enact or amend laws, and incorporate national legislation into the HKBL's Annex III. This understanding of "One Country, Two Systems" effectively absorbed Hong Kong into the jurisdiction of the NPC, with the NPC exercising the highest power. Consequently, the only boundary between China's legislature and Hong Kong's judiciary is the HKBL, its British common law tradition, and any international treaties in which only Hong Kong is a non-state party of ratification.

The NPC, as the PRC's unified power organ, issued a deliberative report on the draft bill of the HKNSL on May 26, 2020 to publicly offer Chinese officials' opinions and recommendations. In the report, the NPC emphasized the need to "maintain" the Chinese government's comprehensive jurisdiction and governance over Hong Kong, establish relevant legal provisions to prevent foreign interference in Hong Kong's affairs, and strengthen national power over law enforcement (NPC Constitution and Law Committee 2020, 101). The report expressly stated the supremacy of Chinese national interests without mentioning the interests of the people of Hong Kong. In contrast to the legally binding understanding of the "One Country Two Systems" principle in the Sino–British Joint Declaration, in the NPC's real-world implementation, expression of sovereign power is issued top-down from the Chinese government to the HKSAR government. The juridical border is, therefore, a site of struggle between the unitary party-state and the non-state jurisdiction, with the governed region striving to maintain the partial separation of the judiciary from the sovereign's executive branch.

Between the NPC's adoption of the bill to enact the HKNSL on May 28, 2020 and its actual promulgation to Hong Kong on June 30, 2020, Chinese officials expressed their views through speeches, explanations, and reports in order to legitimize it. More importantly, this discourse sought to enforce credibility and justify the direct imposition of national legislation which bypassed the Legislative Council, Hong Kong's de-facto parliament under the HKBL's Annex III. In this context, I have analyzed seven official documents to further understand the temporality of the Hong Kong CFA's presupposed jurisdiction over the HKSAR.

The NPCSC and State Council both produced statements on the privileges of the National Security Office over Hong Kong (NPC Constitution and Law Committee 2020; Guo et al. 2020). As a state of exception, the Security Office can exercise its own jurisdiction under "difficult" circumstances related to national security (Zhang 2020, 28). Not only does the HKSAR government have no jurisdiction over the office, but the NPCSC is also the only authority with the power to interpret the HKNSL. The NPCSC further elaborated the Chinese position, stating that there is "no necessary connection between judicial independemce and jurisdiction" (Zhang 2020, 30), referring to the Hong Kong Judiciary's limitations in adjudicating national security cases. The committee's explicit indication of its ultimate responsibilities over Hong Kong including its jurisdiction when it comes to national security (Zhang 2020, 27) shows that the Chinese state organs can override Hong Kong's judiciary at their will. Its discourse on national security focuses on its full control over Hong Kong, citing "national security threats" (Zhang 2020, 26) exemplified during the 2019 Anti-Extradition Protests. Following the promulgation of the HKNSL, Chinese officials at the State Council's press conference pointed to the "legalization" (Guo et al. 2020, 163) of the "One Country, Two Systems" principle, and the PRC's sole power to define and interpret it.

New Juridical Boundaries for Overseas Non-Permanent Judges

The common law tradition embedded within the HKBL has been gradually replaced by the Chinese socialist legal tradition through the institutionalization of the HKNSL. The resignation of a number of non-permanent judges from other common law jurisdictions, as agents of Sino–Hong Kong juridical bordering, have blurred the boundary between the common law and Chinese socialist law applied in Hong Kong.

Since the 1997 handover, the CFA has hosted judges from four other common law jurisdictions, namely the UK, Australia, New Zealand, and Canada (Hong Kong Court of Final Appeal 2023). During the first three years after the security law's implementation, three overseas judges have resigned (Cowie and Torrance 2024) in response to the HKNSL. While the Australian judge did not explain in detail which part of the content of the HKNSL led to his resignation (Torode and Pandey 2020), two UK judges expressed that the HKSAR administration no longer adhered to "the values of political freedom, and freedom of expression, to which the Justices of the British Supreme Court are deeply committed" (Reed 2022). Given the changing relations between Hong Kong and the UK and Australia—in particular the Australian Supreme Court's admission of former Hong Kong lawmaker Ted Hui as a barrister and solicitor (Bourke 2023) and the British government's creation of a visa scheme for Hongkongers (Gower and

Kirk-Wade 2021, 3)—the Chinese jurisdictional expansion over Hong Kong would further exclude the city's juridical inclusion with these formerly mutually cooperative common law jurisdictions.

Chinese Juridical Bordering of Hong Kong from the United Nations

Increasing Chinese jurisdictional expansion over the HKSAR represents an act of bordering that separates Hong Kong from international covenants that had applied to it before the British handover. Due to the British ratifications of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC), Hong Kong remains party to both covenants under Chinese rule. The PRC, having replaced the British Crown as sovereign since 1997, is the state party responsible for the implementation of these covenants within Hong Kong's jurisdiction. The UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR) of the UN Economic and Social Council issued their own concluding observations on Hong Kong in November 2022 and March 2023, respectively (UN Human Rights Committee 2022, 1; CESCR 2023, 1). In both reports, the UN bodies stated that the HKNSL may contribute to a de-facto breach of Hong Kong's obligations under the ICCPR, and a de-facto abolishment of Hong Kong's independent judiciary. The UN organs' suggestions that the Hong Kong Judiciary is no longer independent of the PRC has contested the practical reality of Hong Kong's SAR status.

Conclusion: Juridical Bordering at Different Speeds

The process of bordering between the jurisdictions of Hong Kong and mainland China have taken place at different speeds among regional, national, and international authorities. Drawing insights from the official Chinese discourse, the Chinese sovereign has contested the HKSAR's termination in 2047 by constructing a new temporal order in which Hong Kong's judges are obliged to interpret local law according to Chinese-imposed national security norms. Such normative change has created a new form of juridical bordering between Hong Kong and the PRC's respective legal systems. The legal discourses of the Hong Kong Judiciary, other Common law jurisdictions, and international organizations have resisted the new temporal order imposed by the PRC state organs, thereby avoiding a complete takeover of the Hong Kong Judiciary's legal norms by those of the mainland PRC.

Unlike the PRC, which views the Declaration as an invalid historical document (Wu 2017), other stakeholders continue to recognize it as the legally binding international treaty registered at the UN that it is. The conflicting representations of multiple pasts by various stakeholders involved in defining Hong Kong's jurisdiction serve as a testament to the concept of juridical bordering through a temporal turn.

The case of Hong Kong indicates that a living constitution has its own agency, and its source of power does not solely originate in the sovereign state's authorization of autonomy to temporal jurisdictions. Instead, considering a border as a relational space (Ozguc 2021, 294), the Sino–Hong Kong juridical border is not only the result of a combination of the Sino–British treaty and its subsequent constitutional document establishing Hong Kong as a Special Administrative Region, but also represents the more-than-human border constituted by other actors including the Hong Kong Courts, the adjudication of non-permanent overseas judges from other common law jurisdictions, and UN bodies that monitor and regularly report on the implementation of international human rights treaties in the city.

Drawing inspiration from posthuman conversations in border studies, the attention to how border is constituted has shifted from looking into the space of multiple human and non-human actors acting separately to the space of collective encounters of multiple actors (Ozguc and Burridge 2023, 479). The claims of agencies' fluidity have been confirmed by the temporality of juridical bordering in the Sino–Hong Kong context analyzed in this article; all the official speeches and documents selected for analysis, such as statements delivered by Hong Kong and overseas judges and the standardized reports published by UN officials, can be understood as non-human entities possessing their own agency to shape the existing state of the Sino–Hong Kong juridical border. While the legal formats and standardization were drafted by bureaucrats in the past, the choice of language itself has limited how Hong Kong's jurisdiction can be understood under the "One Country, Two Systems" principle with its ambiguous terms of a "High Degree of Autonomy" set to expire in 2047.

As shown by the competing discourses between the Hong Kong CFA and the Chinese NPC, the ongoing process of the HKNSL's institutionalization is an act of juridical bordering by the new Hong Kong-based Chinese state agencies. As much as the Hong Kong Judiciary attempts to maintain the apolitical status quo of an independent judiciary, in the National Security Law era, the political nature of the HKNSL will only further transform the HKSAR into a jurisdiction with features that are increasingly similar to Chinese socialist legal customs. The multiple realities of the "One Country, Two Systems" principle persist within the discourses of other actors analyzed in this article, but as of the time of writing, six non-permanent overseas judges have resigned from adjudicating at the CFA in Hong Kong since the HKNSL's imposition in 2020 (Ho 2025). As temporal as Hong Kong's own jurisdiction is,

the heterogeneity of this colonial space will soon take on a new form in order to serve the PRC's needs for its version of national security.

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