

Introduction ^{*}

In early 2016, a film that had been sold out at cinemas in Hong Kong was abruptly taken off screens. *Ten Years* (十年; 2015) comprises a series of short films collectively depicting a dystopian future in which Hong Kong's freedoms are taken away by China. These shorts center on, respectively, a shop owner who gets reprimanded by youth scouts reminiscent of Chinese Red Guards from the Cultural Revolution; a self-immolator whose tragic act evokes similar practices in Tibet; a couple who tries to preserve the Hong Kong that they know through macabre attempts at turning themselves and the things around them into biospecimens; and a taxi driver facing economic and psychological hardship because of a language policy favoring Mandarin, China's official language, rather than Cantonese, the dialect spoken in Hong Kong and the taxi driver's mother tongue. The film also includes a segment in which Hong Kong officials and their mainland Chinese counterparts stage a terrorist attack in order to forge the public support they need to pass laws relating to national security, an issue that has led in real life to intense anxiety about the potential curtailment of local rights and freedoms in Hong Kong. The sudden end to the cinematic lifespan of *Ten Years* coincided with an attack on the film by the state-run media in mainland China, as epitomized by the opinion piece in the *Global Times* which denounced it as "a virus of the mind" and as "absurd."¹ While the artistic achievement of the film is a matter of debate, the chilling effect on expression of such denunciations was undeniable²: as a long-time film critic notes, while "no exhibitor would admit to censorship or direct pressure from China," it was unprecedented for a film which sold "to full houses at every single screening" to have its run terminated in such

^{*} This book was completed on January 31st, 2020, and I discuss constitutional developments and relevant cinematic productions up to that date in the following pages. All translations from Chinese sources are my own unless otherwise indicated.

¹ Illaria Maria Sala, "Ten Years – the Terrifying Vision of Hong Kong that Beijing Wants Obscured," *The Guardian*, March 11th, 2016.

² See, for instance, different assessments of the film in "Priscilla Leung Watches *Ten Years*: Story UnFair to Central Government," *Ming Pao Daily News*, January 21st, 2016 and Yat Kwong, "*Ten Years*," *Ming Pao Daily News*, November 20th, 2015.

a manner.³ In response to the discontinuation of *Ten Years* at the cinemas, civic activists in Hong Kong organized free local screenings at community centers and open-air venues to ensure continued access for viewers, and the film directors often joined the audience for post-screening discussions.⁴ *Ten Years* ended up winning Best Picture at the Hong Kong Film Awards.

Ten Years and its aftermath constitute a point of entry into the nexus of constitutional law, film, and identity which I will explore in this book. Hong Kong is a city synonymous with film: from the martial arts movies starring Bruce Lee to the arthouse cinema of Wong Kar-wai, and from the stylized gun fights choreographed by John Woo to the more recent independent documentaries by younger local filmmakers showcased at film festivals around the world, Hong Kong's prolific and varied cinematic productions constitute an industry that puts it firmly on the global cultural map. Even with the advent of new media in the late twentieth and early twenty-first centuries, film remains a highly popular form of entertainment among Hong Kongers. As one of Hong Kong's most dominant cultural forms, it addresses many of the territory's most salient social, cultural, and, as I will show, legal issues.

Ten Years itself engages with a critical problem in the territory, that of a growing identity crisis in a community constantly on guard against being subsumed by mainland China. More importantly for my purposes, the film suggests that in Hong Kong, questions of identity are often intertwined with issues of law, an intertwining which has so far been rarely explored on its own terms in the vast scholarship on either Hong Kong law or Hong Kong cinema: in the shorts, anxieties about a fading sense of selfhood are variously tied to the rise of surveillance and the decline of privacy, the implementation of censorship and self-censorship, a restriction of language rights, and the use of national security as a pretext for expanding government control. The circumstances surrounding the film's reception are also significant: it could still be viewed in Hong Kong, albeit in less conventional locations, and the awards ceremony still aired on primetime television in the city even though its broadcast was canceled in the mainland as a result of the Best Picture nomination.⁵ These differences indicate that guarantees of rights and liberties such as artistic freedom and freedom of information underpin the existence of a distinct community of film viewers, directors, and producers from the rest of the country, a community whose boundaries are, as we shall see, becoming increasingly blurred as Hong Kong becomes more integrated with the mainland.

In the following pages, I argue that film can be approached as a set of images capturing the ways in which a selfhood interwoven with law is

³ Sala, "Ten Years."

⁴ See Karen Fang, "Cinema Censorship and Media Citizenship in the Hong Kong Film *Ten Years*," 16(2) *Surveillance & Society* (2018), 142–157.

⁵ Alan Wong, "China News Blackout as *Ten Years* Takes Hong Kong Best Film Award," *New York Times*, April 4th, 2016.

articulated, placed under stress, bolstered, and transformed amid a number of constitutional controversies, first when Hong Kong transitioned from British colony to Chinese Special Administrative Region and then in the postcolonial period during which it became increasingly integrated into the Chinese nation. By “constitutional controversies,” I refer to disagreements about the status and meaning of a corpus of legal texts – primarily the Basic Law, Hong Kong’s post-handover constitutional document, but also associated texts such as the Sino-British Joint Declaration and the Bill of Rights Ordinance – that sparked heated debates, intense conflict, and grave concerns in Hong Kong society. These controversies reverberated not only among lawyers, judges, and lawmakers but among Hong Kong residents more broadly, causing many of them to march in the streets, occupy major commercial districts, and even engage in violence. I posit that while such reverberations are rarely picked up in more doctrinal discussions of constitutional interpretation focusing on, say, the application of the proportionality test, they are registered in some of the cinematic images that appeared at the same historical moment as the controversies. Filmmakers engage with such constitutional events with varying levels of awareness: sometimes, they explicitly select a contentious issue as the subject of their work, but often a film captures the mood or the *mentalité* of the city without the filmmaker consciously intending for it to do so. I therefore include in the selection of films in this book fictional narratives that thematize the legal process, such as courtroom dramas, as well as films that more explicitly reference or more consciously reflect upon ongoing, real-life legal controversies, such as documentaries. My investigation will proceed broadly chronologically from the 1980s to our own time.

Hong Kong is a liberal jurisdiction nestled within China’s one-party socialist regime. Its over-arching constitutional principle is known as “One Country, Two Systems.” First put forward by Deng Xiaoping, who emerged as China’s paramount leader in the late 1970s and remained influential in Chinese politics until his death in 1997, it aims to ensure that the city’s capitalist economic system, established during its time as a British colony, would remain unchanged for fifty years after China regained sovereignty and that China’s socialist system and policies would not be implemented within that period. The principle also guarantees a separate political system and legal framework for Hong Kong. In the Sino-British Joint Declaration, the 1984 agreement signed between the British and Chinese governments which stipulated that the transfer of sovereignty would occur on July 1st, 1997, the principle of “One Country, Two Systems” is encapsulated in China’s promise to designate Hong Kong as a “Special Administrative Region” that will “enjoy a high degree of autonomy” from the Central People’s Government. The promises in the Declaration are given form in the Basic Law: while Article 1 states that Hong Kong is an “inalienable part” of China, the preamble reiterates the

“One Country, Two Systems” formula, and Article 2 enshrines Hong Kong’s “high degree of autonomy.”⁶

The constitutional document aims to strike a balance between acknowledging Chinese sovereignty and respecting the differences between Hong Kong and the rest of the country. Its significance is not only economic, legal, and political, but also cultural.⁷ Article 5 underscores this point: it states that “the previous capitalist way of life shall remain unchanged for fifty years” and that “the socialist system and policies” of the mainland “shall not be practised in the Hong Kong Special Administrative Region.”⁸ The language here can be traced to Section 3(5) of the Joint Declaration, which states that the social and economic systems in Hong Kong will be preserved, “and so will the life-style.”⁹ The emphasis on “lifestyle” and “way of life” in the two documents underscores the imbrication of the constitutional guarantee and cultural identity: what the territory’s highest law protects is not only a framework for trade and commerce but an entire way of living and an entire way of being. The “One Country, Two Systems” principle, as well as the Basic Law which enshrines it, forms the premise of a unique identity. In this light, challenges to the rights and freedoms guaranteed to Hong Kongers within their constitutionally demarcated economic, legal, and cultural spaces, whether real or imagined, often come to be regarded as nothing less than threats to that identity. It is precisely these threats, and the responses to them, that become visually registered in the films I examine.

In this Introduction, I will first provide, by way of background, a historical overview of the cultural processes which gave rise to a distinct Hong Kong identity. I then focus on the interweaving of law and identity: the second section traces how the construction of this identity became inseparable from law, and in particular from ideas about the rule of law, the common law, and human rights; and the third section reexamines the major constitutional controversies in post-handover Hong Kong in relation to their bearing on conceptions of self and community. In the fourth, I return to my discussion of Hong Kong cinema to consider how film operates as a medium engaging with the disputes about “One Country, Two Systems” that impacted upon

⁶ Preamble, Article 1, and Article 2, *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China*.

⁷ In his seminal work on the Basic Law, Yash Ghai argues that the emphasis of the constitutional document is economic, and not cultural (*Hong Kong’s New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*, 2nd ed. (Hong Kong: Hong Kong University Press, 1999), pp. 184–185). The maintenance of Hong Kong’s economic system is undoubtedly an important dimension of the Basic Law, but I differ from Ghai in my assessment of the cultural ramifications of Hong Kong’s constitutional order.

⁸ Article 5, *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China*.

⁹ *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong*.

Hong Kongers' sense of who they are and how they are situated in relation to mainland China.

Becoming Hong Kongese: A Brief History

Hong Kong as it exists today consists of three parts: Hong Kong island, which China permanently ceded to Britain in 1842 under the Treaty of Nanking; the Kowloon Peninsula, which it ceded to Britain in 1860 under the Convention of Peking; and the New Territories and a number of outlying islands, which it leased to Britain for ninety-nine years in 1898. As a number of historians have noted, people in Hong Kong did not begin to develop a sense of themselves as “Hong Kongers” until the middle of the twentieth century. For a long time, people who lived in Hong Kong were “sojourners, economic migrants or refugees” of Chinese ethnicity who “shared much more in common with their fellow countrymen living on the mainland of China” than with the expatriates in the colony.¹⁰ This “sojourner mentality” began to change after the formation of the People’s Republic in 1949: as Hugh Baker observes in an oft-cited article, the resultant “closing of the border between Hong Kong and China, and the very different political and economic situations on the two sides of it [...] led to the emergence of a new attitude on the part of the Chinese” living and working in the colony, who began to “look on Hong Kong as their permanent home.”¹¹ This self-identification intensified in the 1960s and the 1970s, as the first postwar generation of people born in Hong Kong came of age; this was a generation that grew up in the British colony and had little firsthand experience of life in China. The contrast between the “political stability and economic freedom in Hong Kong” and the “repression and chaos” in China during the Great Leap Forward and the Cultural Revolution further consolidated emerging ideas of selfhood.¹²

Yet conditions in the colony were far from perfect, and vast inequalities led to serious riots in 1966. These riots were followed by further disturbances in 1967 which were directed by the clandestine Hong Kong branch of the Chinese Communist Party against “the British imperialist capitalists.”¹³ To gain public support in the aftermath of these events, the colonial government adopted policies to cultivate a sense of belonging in the people living in Hong Kong: it improved communication between the administration and the populace; built “New Towns” in the more sparsely populated New Territories to relieve overcrowding in the urban areas of Kowloon and

¹⁰ Steve Tsang, *A Modern History of Hong Kong* (Hong Kong: Hong Kong University Press, 2004), p. 180.

¹¹ Hugh D. R. Baker, “Life in the Cities: The Emergence of Hong Kong Man,” 95 *China Quarterly* (1983), 469–479 (478).

¹² John M. Carroll, *A Concise History of Hong Kong* (Hong Kong: Hong Kong University Press, 2007), p. 167.

¹³ Tsang, *A Modern History of Hong Kong*, p. 185.

Hong Kong island; and expanded the budget for the arts to nurture Cantonese-language culture such as Cantonese opera and drama.¹⁴ These policies contributed substantially to the consolidation of “Hong Kongers” as a community, and by the time the Sino-British Joint Declaration was signed in 1984, a distinct identity had coalesced in the city. Writing one year before the Declaration, Baker discerns a category known as “the Hong Kong Man” that is “sui generis”: brought up at the confluence of both Western and Asian cultural traditions, this is a hybrid being who, while moving comfortably between the two cultures, “gives little credit to the Union Jack” and is “not necessarily happy at the prospect of the five-starred red flag presiding over his activities.” Instead, “he belong[s] to Hong Kong” and is “intensely proud of it.”¹⁵ The cultural critic Ackbar Abbas makes a similar point when he observes, shortly before the 1997 handover, that “it is not true, as some might wish to believe, that if you scratch the surface of a Hong Kong person you will find a Chinese identity waiting to be reborn. The Hong Kong person is now a bird of a different feather, perhaps a kind of Maltese Falcon.”¹⁶

Since the retrocession, academic and nonacademic commentators have identified an “identity crisis” gathering pace in Hong Kong.¹⁷ One way of approaching this crisis is as a reaction to the feeling that the cultural hybridity or uniqueness inherent in Hong Kong identity is gradually being eroded as the city moves further away from its colonial past and becomes more deeply integrated with China. This integration takes place on multiple levels. In economic terms, one significant moment of integration came in 2003, when the local Hong Kong government and the Chinese government signed the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), a free trade arrangement which provided greater access to Chinese markets for Hong Kong businesses, and enabled mainland businesses to use Hong Kong as a springboard to the global market. It also adopted the Individual Visit Scheme, which allowed people from mainland China to visit Hong Kong on an individual basis, whereas before 2003 they could only visit the city on business or as part of a group tour. These measures were meant to boost the Hong Kong economy after the Severe Acute Respiratory Syndrome,

¹⁴ Carroll, *A Concise History of Hong Kong*, pp. 168–172.

¹⁵ Tsang, *A Modern History of Hong Kong*, p. 195.

¹⁶ Ackbar Abbas, *Hong Kong: Culture and the Politics of Disappearance* (Hong Kong: Hong Kong University Press, 1997), p. 2.

¹⁷ May Sin-mi Hon, “SAR Still Has an Identity Crisis – Anson Chan,” *South China Morning Post*, December 29th, 2002; Chris Yeung, “What Identity Crisis?,” *South China Morning Post*, May 23rd, 2005; Howard Y. F. Choy, “Schizophrenic Hong Kong: Postcolonial Identity Crisis in the *Infernal Affairs* Trilogy” *3 transtext(e)s transcultures* (2007), 52–66; “Feeling Special – Hong Kong’s Identity Crisis,” *Economist*, June 4th, 2009; Manik Mehta, “Hong Kong’s Identity Crisis,” *South China Morning Post*, September 8th, 2012; Sebastian Veg, “Hong Kong’s Enduring Identity Crisis,” *Atlantic*, October 16th, 2013; Michael Chugani, “Identity Crisis is the Root of an Unhappy Hong Kong,” *Hong Kong Economic Journal*, February 14th, 2019; Brian Y. S. Wong, “Hong Kong’s Identity Crisis is One of its Own Making,” *South China Morning Post*, May 8th, 2019.

or the SARS epidemic, pushed it into the doldrums, but they also “reshaped the cityscape to accommodate the needs of the Mainland tourists” as Hong Kong became more financially reliant on Chinese tourism and commerce. The rising number of travelers, coupled with the increasing number of people relocating to the city to live and work from the mainland, meant that more Mandarin could be heard on the streets, and reports of culture clashes between mainlanders and local Hong Kongers became increasingly frequent.¹⁸

At the level of education, the Hong Kong government’s 2012 attempt at introducing Chinese civic education in local primary and secondary schools, in the form of a curriculum on “moral and national education,” sparked widespread concerns that it was seeking to brainwash the city’s children through a program that espoused the position and doctrines of the Communist Party.¹⁹ Anxieties about blurred boundaries reached a peak in 2015 following the disappearance of five men affiliated with a Hong Kong bookstore which specialized in gossipy titles about the Chinese leadership. The booksellers variously disappeared from Thailand, Hong Kong, and the mainland, and subsequently reemerged in custody in mainland China.²⁰ They claimed on state media that they had left Hong Kong voluntarily, but the incident sparked fears in Hong Kong that they were illegally abducted by the Chinese authorities for selling books banned in the mainland.²¹ One of them subsequently told reporters that he was kidnapped while crossing the border and warned that “it can happen to you too [. . .] This is not just about me. This is about the freedom of the Hong Kong people.”²² Three years later, the high-profile opening of the fifty-five kilometre Hong Kong-Zhuhai-Macau Bridge, a project much criticized in Hong Kong for its detrimental impact on local aquatic life as well as its massive budget overruns, provided a symbol of this uneasy but ever closer union.²³

All of these developments combined to put transformative pressures on established conceptions of identity and gave rise to a sense among some people that their selfhood was under threat. In many Hong Kongers who grew up before the handover, there arose a feeling that their uniqueness as a group of people situated in that in-between space of being, in Baker’s description, both

¹⁸ See, for instance, Editorial, “Stop Culture Clash Getting Out of Hand,” *South China Morning Post*, January 26th, 2012; Vivienne Chow, “Anger at Mainland Visitors Escalates with ‘Locust’ Ad,” *South China Morning Post*, February 1st, 2012; Marla Friedman, “Cultures Clash as Mainland Chinese Tourists Flood Hong Kong,” *Huffington Post*, November 20th, 2013; Tanna Chong and Chris Luo, “‘Pee-in-HK’ Call Over Picture Furor: Mainlanders Launch Online Campaign to ‘Familiarize’ Hong Kongers with Humans’ Natural Functions After Clash Over Public Urination,” *South China Morning Post*, April 24th, 2014.

¹⁹ Alexis Lai, “‘National Education’ Raises Furor in Hong Kong,” *CNN*, July 30th, 2012.

²⁰ Philia Siu, Ng Kang-chung, and Owen Fung, “Bookseller Lam Wing-kee Reveals Explosive Details of His Mainland China Detention,” *South China Morning Post*, June 16th, 2016.

²¹ John Kang, “The Missing Hong Kong Booksellers Saga Explained,” *Forbes*, June 17th, 2016.

²² Siu, Ng, and Fung, “Explosive Details.”

²³ Kanis Leung, “World’s Longest Sea Crossing Is Finally Finished, but Hong Kong-Zhuhai-Macau Bridge Has Come at a High Cost,” *South China Morning Post*, October 19th, 2018.

“not British or western” and “not Chinese in the same way that citizens of the People’s Republic of China are Chinese” was wearing away.²⁴ The younger generation does not necessarily know of or remember any cultural reality other than the one under Chinese sovereignty, but as *Financial Times* correspondent Ben Bland observes, they evince a strong anti-integration sensibility and their self-understanding is anchored in the idea of “not being a mainlander,” even if many of them “find it difficult to define what it means to be a Hong Konger.”²⁵ Local journalist Michael Chugani further notes that many young people feel like “their culture and way of life is dying a slow death” due to the deepening integration.²⁶ According to a 2019 survey by the *Economist*, almost nobody in Hong Kong under the age of thirty identifies as Chinese.²⁷

Scholars of Hong Kong culture have sought an analytical register for articulating this amalgamated sense of loss, nostalgia, disorientation, and cultural besiegement. One of the key figures in the field is Abbas. Looking back at the 1980s and the 1990s, Abbas identifies a “politics of disappearance” at work in the city: according to him, “the uncomfortable possibility” that China would impose “an alien identity” on Hong Kong led to an anxious sense that the self as one knew it was about to disappear, and this ever-present possibility of disappearance is what triggered reflection on what Hong Kong identity means.²⁸ In the postcolonial era, the identity crisis is often considered the result of a resistance to the pressures of disappearance arising from what is variously described as “re-Sinicisation,”²⁹ “mainlandization,”³⁰ and even Chinese “recolonization.”³¹ Concerns about the deepening of such processes have led to the emergence of localist sentiments and calls for Hong Kong independence in some quarters, as evidenced by the establishment of localist political parties such as Hong Kong Indigenous and Youngspiration in 2015, as well as Demosistō and the Hong Kong National Party in 2016.³²

Hong Kong identity, then, can be said to be a form of selfhood that is built upon the possibility, even the likelihood, of its own disappearance as the city

²⁴ Baker, “Life in the Cities,” 478.

²⁵ Ben Bland, “China Tensions Give Hong Kong an Identity Crisis,” *Financial Times*, June 29th, 2017.

²⁶ Chugani, “Identity Crisis Is the Root of an Unhappy Hong Kong.”

²⁷ “Almost Nobody in Hong Kong under 30 Identifies as ‘Chinese,’” *Economist*, August 26th, 2019.

²⁸ Abbas, *Hong Kong*, p. 4.

²⁹ Choy, “Schizophrenic Hong Kong: Postcolonial Identity Crisis in the *Infernal Affairs* Trilogy,” p. 55.

³⁰ Carol A. G. Jones, *Lost in China? Law, Culture and Identity in Post-1997 Hong Kong* (Cambridge, Cambridge University Press, 2015), p. 10.

³¹ Sonny Lo, “The Mainlandization and Recolonization of Hong Kong: A Triumph of Convergence over Divergence with Mainland China,” *The Hong Kong Special Administrative Region in its First Decade*, edited by Joseph Y. S. Cheng (Hong Kong: City University Press, 2007), pp. 179–232.

³² The Hong Kong National Party was subsequently banned on the grounds that it posed a threat to national security: Lily Kuo, “Hong Kong Bans Pro-independence Party as China Tightens Grip,” *Guardian*, September 24th, 2018.

becomes increasingly fused with the rest of China. Disquiet and angst about the politics of disappearance first emerged when negotiations for the city's return to China began in the 1980s, ebbed and waned in the 1990s, and returned in the first decades of the twenty-first century as Hong Kong's political, economic, and cultural integration with the mainland gathered pace. Given Hong Kong's physical location, first as a colonial outpost adjacent to China and then as a special administrative region within it, as well the common ethnicity of most of its own inhabitants and those across the border, there is little in geographical or ethnic terms that grounds Hong Kongers' self-understanding as having a distinct identity vis-à-vis the rest of the country. Furthermore, China's rapid economic growth and competition from places such as Shanghai have threatened to undermine the city's unique role as an international financial center in the country. In these circumstances, the law emerged as a differentiating factor or part of a set of "alternative, symbolic, boundary-markers" between Hong Kong and the mainland, and became increasingly entrenched as a definitive part of the community's understanding of itself in the postcolonial era.³³ I will explore the multiple links between law and self-identification in the territory in the next two sections, before returning to my discussion of film.

I Have the Rule of Law, Therefore I am

An important aspect of the process of "becoming Hong Kongese," and one which sometimes gets insufficiently foregrounded, is the role of law.³⁴ China has a socialist legal system, in contrast to Hong Kong's liberal system characterized by the rule of law, commitment to human rights, and independence of the judiciary. China's record of protecting rights and freedoms remains heavily disputed: while the Chinese constitution contains a list of protected rights, in reality the government deems the exercise of these rights unacceptable if it challenges party rule.³⁵ The state's tight control of the Internet and mass media undermines the freedom of expression and of access to information,³⁶ and there have been documented instances of forced confessions and torture which compromise the right to a fair trial.³⁷ Legal scholar Eva Pils has underscored that human rights defenders in China are often portrayed as "enemies of the state" and subjected to travel bans, informal house arrest, detention, and even forced disappearances.³⁸ Judicial independence remains shaky: as Pils also

³³ Jones, *Lost in China?* p. 39. ³⁴ Carroll, *A Concise History of Hong Kong*, p. 167.

³⁵ Albert H. Y. Chen, *An Introduction to the Legal System of the People's Republic of China*, 5th ed. (Hong Kong: LexisNexus, 2019), p. 66.

³⁶ Human Rights Watch, *World Report 2019: China*.

³⁷ Human Rights Watch, "Tiger Chairs and Cell Bosses: Police Torture of Criminal Suspects in China" May 13th, 2015.

³⁸ Eva Pils, *Human Rights in China: A Social Practice in the Shadows of Authoritarianism* (Cambridge: Polity Press, 2018), p. 118. For a discussion of a more specific crackdown on human rights lawyers and its aftermath, see Hualing Fu and Han Zhu, "After the July 9 (709)

points out, “the judiciary’s institutional design does not support independence from other authorities of the Party-State,” such that while “judges are required to apply the law to facts,” “they must also be loyal to the Party, according to their professional oath.”³⁹

Hong Kong’s Basic Law provides for the continuation of a separate legal system based on the common law: unless they contravene the constitution, and subject to amendment by the legislature, “the laws previously in force in Hong Kong” prior to the handover, “that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained” (Article 8). It also guarantees that Hong Kong’s courts will “exercise judicial power independently, free from interference” (Article 85), that the system of trial by jury will be preserved (Article 86), and that the Court of Final Appeal can “invite judges from other common law jurisdictions” to adjudicate cases (Article 82). Importantly, the Basic Law gives Hong Kongers human rights protections beyond those enjoyed in the mainland. For instance, Article 39 guarantees that the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and international labour conventions that apply to Hong Kong will remain in force after the resumption of Chinese sovereignty. The constitutional document’s extensive list of rights is complemented by a well-established mechanism of judicial review in the courts, and the Bill of Rights Ordinance further incorporates provisions of the ICCPR at the level of domestic legislation. The legal structure in Hong Kong under “One Country, Two Systems” allows for a way of life characterized by freedoms that are impermissible in the rest of the country.

In this context, the rights which Hong Kongers enjoy within their constitutional order become a firm marker of identity, and the idea of a separate legal system becomes a fundamental part of how people understand their distinctiveness from their Chinese counterparts across the border. Recognizing the inextricable connections between law and selfhood sheds light on why references to legal processes, figures, and conundrums appear across genres in Hong Kong film: from comedies to documentaries to gangster movies, law is an important part of the territory’s set of cultural representations because it is an integral part of Hong Kongers’ conception of themselves.⁴⁰

Crackdown: The Future of human Rights Lawyering,” 41(5) *Fordham International Law Journal* (2018), 1135–1165.

³⁹ Pils, *Human Rights in China*, p. 46.

⁴⁰ On constitutions and identity beyond the Hong Kong context, see Michel Rosenfeld, *The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community* (Abingdon: Routledge, 2010) (the constitutional subject as (re)constructed through negation, metaphor, and metonymy) and Gary Jacobsohn, *Constitutional Identity* (Cambridge: Harvard University Press, 2010) (the identity of a constitution as an ongoing negotiation of the demands of continuity and change). As both authors point out, constitutional identity intersects with, but is analytically distinct from, other identities such as national, cultural, and religious