

Enlightenment from the Development Path of the Rule of Law in Hong Kong

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ABSTRACT Hong Kong is known worldwide for its rule of law. Its laws are based on the transplantation of English law and are compatible with the material living conditions of the society, thus forming a good law. But only good law is not the rule of law. The rule of law must also be supported by relevant institutions and the public's trust in the judiciary. The formation of a society ruled by law in Hong Kong has enlightenment and reference for the current rule of law in the mainland.

KEY WORDS Hong Kong; Rule of law; System.

According to the "Historical Records", after stabilizing Baiyue area, Qin Shihuang moved criminals and businessmen from the Central Plains to observe and develop here, and divided them into four counties such as Nanhai and Guilin, of which Hong Kong, Kowloon and the New Territories belonged to Nanhai County. Since then, Hong Kong has been included in the Chinese territory, under the jurisdiction of administrative agencies at all levels in China, and is an integral part of China's traditional legal system. It has a distinctive feature of the Chinese legal system, namely the mutual penetration and integration of ritual and law until the 19th century, been encroached on by the British.

Over the past 150 years, the little-known fishing village has developed into an international metropolis with a complete rule of law. The Hong Kong people, deeply influenced by the traditional Chinese culture of rule of rites, have accepted the rule of law civilization promoted by the Hong Kong and British governments psychologically. The spirit of rule of law, such as rights-based, power-constrained and judicial independence, has penetrated into every corner of Hong Kong. This kind of rule of law originates from common law system, and manifests people's unswerving faith, recognition and pursuit of law. From a theoretical point of view, the rule of law has formal rule of law and substantive rule of law. Formal rule of law is manifested as follows: firstly, the law should be rational and solemn, and the formulation and amendment of any law must be based on a reasonable purpose and follow a rigorous set of procedures. At the same time, excluding any personal subjective color in the implementation of the law, so that the law does not change according to the subjective intentions of the ruling party. Secondly, the law should be supreme and

normative. The law should have the supreme position in the whole social norm system. At the same time, the legal norm system should also clarify the level of effectiveness, so as to realize the orderly adjustment and management of society. Third, the law should be made public. Only by making laws public and making people aware of the contents of laws can we guide people's behavior. Fourthly, the law should be universal and equal. The law should be universally applicable to all, and no one should be treated differently because of his nationality, religion and belief. Fifth, the law should have certain stability. With the development of social relations, the old laws are abolished, and new laws are promulgated and put into effect. However, these changes should not be too frequent and can not be changed overnight. Moreover, the laws should be consistent, and the inheritance relationship between the old and the new laws must be maintained. Fifthly, the principle of natural justice, such as fair trial, must be observed. Sixth, the courts should have the power to review the actions of other government departments to determine whether they are in conformity with the law, and at the same time, let the public know that it should be easy to go to the courts for a lawsuit.

In the process of rule of law, Hong Kong has practiced the above six elements in legislation, administration, justice and law enforcement, thus realizing the transformation from formal rule of law to substantive rule of law. The specific process of this transformation is undoubtedly of great enlightenment significance to the construction of the rule of law in the same-rooted mainland.

I. ANALYSIS OF THE RULE OF LAW IN HONG KONG

1. A Sound Legal System Is the Technical Support for The

Rule of Law in Hong Kong

The legal process in Hong Kong began on February 1, 1841 with the "Announcement to the People" issued by British Plenipotentiary Ambassador Bernadine in Hong Kong. After more than 150 years of development and evolution, it has been perfected after the Central People's Government of the People's Republic of China resumed the exercise of sovereignty over Hong Kong. In the meantime, Hong Kong's legal system has made considerable progress, and gradually established, becoming increasingly stable.

1.1. The legal system before the reunification of Hong Kong

1) The transplantation of British law. For historical reasons, British law has become a major part of Hong Kong's legal system. Including:

First, Constitutional Law "Emperor's System" and "Royal Instructions". In theory, Hong Kong does not have the status of promulgating its own constitution, but both laws were promulgated and came into force in the name of the supreme ruler of the United Kingdom. They specify the organizational structure and mode of operation of Hong Kong's politics. They are the origin and basic legal basis of all British powers in Hong Kong, whether in the United Kingdom applicable in Hong Kong. Laws, or laws enacted by the Legislative Council of Hong Kong, must not contradict them, which is quite similar to the status of the "Constitution", so they are customarily called the Constitution of Hong Kong.

Second, Common Law and Equity Law. They are the main source of British law and Hong Kong law, accounting for 85% of Hong Kong law, including 34 regulations applicable to Hong Kong in the common practice of applying British law in overseas territories before 1943 and laws enacted for Hong Kong after 1843. From this we can see that Hong Kong law reflects the shadow of British law, whether in the form of law or in the content of law, or even in the concept and value of law. It can be seen that Hong Kong's transplantation of British law is comprehensive. Although this kind of transplant was forced to start, the British colonists did not arbitrarily rely on their domination to enforce the British law arbitrarily, but fully took into account the special social environment and internal requirements of Hong Kong, and appropriately carried out the necessary Adjustment, while transplanting the tangible legal system, also transplanted the intangible legal spirit. This is an important factor in the successful implantation of British law in Hong Kong. These transplanted laws establish the application of British substantive and procedural laws in Hong Kong, as well as the judicial jurisdiction, application of laws, litigation procedures and enforcement of laws of the judiciary in Hong Kong. They provide a basis for the establishment of the judicial system in Hong Kong, and at the same time make the common law and equity law of the United Kingdom apply smoothly to Hong Kong, thus the colonial rule of Britain was stabilized.

2) Hong Kong's local legislation, court precedents, traditional

Chinese laws and customs. After the British occupation of Hong Kong, the Chinese people still tend to settle disputes with their own coordinating bodies. Although the Hong Kong and British governments are deeply concerned about the phenomenon of Chinese autonomy and overcome it by tightening their administrative powers, they have adopted a comparative study of Chinese traditional civil laws and customs, considering their profound social background. Rational and inclusive attitude continued to recognize its effectiveness in dealing with disputes between Chinese people, and the promulgation of the Announcement of Righteous Laws made the laws and customs of the Qing Dynasty one of the components of Hong Kong's laws. But at the same time, they are also aware of the threat these traditional laws and customs pose to their rule. Therefore, on the one hand, the Hong Kong government has formulated a large number of regulations to absorb the reasonable factors in Chinese traditional laws and customs, in order to obtain the deep recognition of the Chinese people. On the other hand, bringing the advantages of British legal culture into full play, gradually expanding and slowly devouring the sphere of influence of Chinese traditional laws and customs. With the development of social economy, in Hong Kong, the traditional statute law has been gradually eliminated because of its inadaptability to the development of society, and the scope of application of customary law is decreasing.

3) International treaties and agreements. Hong Kong is not an independent sovereign country. According to the principles of international law, international treaties are binding only on the contracting parties. Therefore, there are two types of international treaties applicable to Hong Kong: one is the international treaties signed by the Hong Kong government in accordance with the qualification of "administrative entity", such as the World Health Organization Convention, the General Agreement on Tariffs and Trade. The other is the international treaties signed by Britain as a sovereign state, which are binding on Hong Kong, such as the Convention on the Settlement of Investment Disputes, the Patent Convention and the International Agreement on Textile Trade.

To sum up, the laws before Hong Kong's return were mainly based on British law and belonged to the common law system. After being used and evolved in the long-term practice of social development, they have now formed a complete legal system adapted to Hong Kong's social development, but the original colony is still undeniable.

1.2. The legal system after the return of Hong Kong

On July 1, 1997, China resumed the exercise of sovereignty over Hong Kong. According to the Basic Law of the Hong Kong Special Administrative Region, the National People's Congress authorized the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative, independent judicial and final adjudication powers in accordance with the provisions of this Law. At the same time, it

stipulates that "Hong Kong's original laws, i.e. common law, equity law, ordinances, subsidiary legislation and customary law, shall be retained except those that contravene this Law or have been amended by the legislature of the Hong Kong Special Administrative Region." As can be seen from the above-mentioned provisions, Hong Kong still belongs to the Anglo-American legal system after its return. Except for the abolition of a few colonial laws, other existing laws are still valid as long as they are not inconsistent with the basic law. This is a great initiative of "one country, two systems", and also a need for continuity of the process of rule of law. Any legal system is built on a certain economic basis. Once the law is separated from its economic basis, it will lose its value of existence. The system and principles established in the Basic Law of the Hong Kong Special Administrative Region are not only the need to respect objective facts, but also the need to maintain Hong Kong's prosperity and stability. Thus, the current legal system in Hong Kong is as follows:

1) Basic Law of the Hong Kong Special Administrative Region. It embodies the basic principles and policies of the Chinese government towards Hong Kong, is the legal basis for the establishment of Hong Kong's political and judicial systems, and is the "Constitution" of Hong Kong.

2) Reservation of the original law. According to the provisions of the Basic Law, Hong Kong's existing laws, i.e. common law, equity law, ordinances, subsidiary legislation and customary law, remain in force as long as they do not conflict with the Basic Law or are amended by the legislature of the Hong Kong Special Administrative Region.

3) National laws. After the return of Hong Kong, due to historical and realistic factors, national laws were generally not implemented in Hong Kong. However, based on national sovereignty, national laws concerning national defense and diplomacy were promulgated or implemented locally in Hong Kong through Annex III of the Basic Law.

4) Laws enacted by the legislature of the Hong Kong Special Administrative Region. Article 17 of the Basic Law provides that the Hong Kong Special Administrative Region shall enjoy legislative power. Laws enacted by the legislature of the Hong Kong Special Administrative Region shall be submitted to the Standing Committee of the National People's Congress for the record. Filing does not affect the entry into force of the law. Article 66 provides that the Legislative Council of the Hong Kong Special Administrative Region shall be the legislature of the Region. The above provisions indicate that the Legislative Council of Hong Kong has the power to enact, amend and repeal laws and regulations suitable for Hong Kong after its return.

5) International treaties. As mentioned above, international treaties are one of the sources of Hong Kong's law. After the reunification, they will continue to be effective as long as they do not conflict with the Basic Law. At the same time, in the name of

"Hong Kong, China", the Hong Kong Special Administrative Region may maintain and develop relations with other countries, regions and relevant international organizations, sign and implement relevant agreements. Article 153 stipulates that international agreements which the People's Republic of China has not yet acceded to but which are already applicable to Hong Kong may continue to apply.

Since the return of Hong Kong on July 1, 1997, under the protection of the Basic Law, Hong Kong is still an international metropolis, and the legal system has been constantly strengthened and improved in the socio-economic development. The Legislative Council of Hong Kong has enacted some new laws to adapt to Hong Kong's social and economic development, and amended or supplemented some laws to ensure Hong Kong's prosperity and stability. It is precisely because of the perfect legal system that we have laid the institutional foundation for the formation of a society ruled by law in Hong Kong.

2. A sound institutional structure is a powerful backing for the rule of law in Hong Kong

2.1. Judicial independence system

Only a perfect legal system, but without the support of other systems, the rule of law is impossible to achieve. In the process of the development of the rule of law in Hong Kong, judicial justice and judicial independence are important factors to ensure that people consciously abide by their laws. This is not only the pillar of the rule of law in Hong Kong, but also the advantage of the Hong Kong system.

Judicial independence, which affects the fairness and justice of the whole legal system, is the core spirit of the rule of law. Its thought originated in England in the mid-17th century. At that time, Britain had the political foundation and technical support needed to establish an independent judicial system. From the political point of view, the formation of decentralization system has created the possibility of judicial independence; from the technical point of view, British judges have created a series of judicial principles such as "judges do not interfere in politics", so that they can maintain their professional independence in the complicated political struggle. It is the existence of this judicial spirit that provides technical preparation for the final establishment of the judicial independence system in Britain. With the promulgation and implementation of the Bill of Rights and the Law of Succession to the throne, judicial independence in Britain has completed the development process from ideology to institutional norms, while the United States has transformed such institutional norms into constitutional principles with supremacy. For a time, the common law system regards judicial independence as the golden rule and attaches great importance to the maintenance.

The system of judicial independence permeates the humanistic traditions and values of Western countries. As a British colony, in the process of referring to the British regime model and its political system, the unavoidable fact is how to choose and reject

the various systems of the West. At that time, the lawyer system, adversarial trial system and jury system, which represented the independence of the judiciary, were new but unacceptable to the Chinese people, so they still tended to set up their own coordinating bodies to settle disputes among them. The Hong Kong and British governments are aware of the danger of this phenomenon to their rule, so on the one hand, they stipulate that only the Hong Kong courts are the only way to resolve disputes with legal effect; on the other hand, they attract Chinese people to enter the British courts through the advantages of British legal culture.

At the beginning, they paid attention to the exemplary role of the British themselves and proved the superiority of these systems to the Chinese. Later, we should strengthen the training of legal talents of Chinese people, and take effective measures to ensure the justice of the judiciary, win the trust of Chinese people and ensure the authority of the judiciary. Through the efforts of several generations of Hong Kong governors, these systems have gradually been recognized by Chinese people and integrated into social life.

Over the past 100 years, Hong Kong has gradually formed its own relatively complete judicial system in accordance with the British judicial system. The current judiciary in Hong Kong consists of the Court of Final Appeal, the High Court, the Regional Court, the Magistrate's Court and other specialized courts. The courts are independent of the government and follow the principles of precedent, independent trial, fair procedure and jury system in handling cases. The jury system is one of the most important characteristics of Hong Kong's legal system. The defendant will be tried in court by non-legal persons in society. Being a juror is the duty of every qualified Hong Kong resident. Every juror has the duty to ensure judicial justice. By participating in judicial activities, the public can feel the dignity of the law and consciously abide by the law, and at the same time enable the public to truly understand what justice is. As judicial justice is generally recognized in society, it establishes people's trust in justice and lays a conceptual and institutional foundation for the formation of a society ruled by law in Hong Kong.

2.2. Legal administration and supervision system

Hong Kong's concept of the rule of law is fully embodied in the government sector, which is governed by law. That is to say, the activities of government organs or government personnel must be based on law. Otherwise, it is illegal, even if it is directed by senior officials or in the interests of the state, unless there is a legal authorization for government action. The idea of "law is superior to power" and "legitimacy of power" is inherited and developed on the basis of common law and is the core of the spirit of rule of law.

This system is fully embodied in Hong Kong as follows: 1) the legitimacy of power generation, i.e. the power of government departments and public officials must be based on law, and the principles, procedures and methods of their organization, powers

and activities should be clearly defined by law to prevent the government from enjoying "power that can be used at will". 2) The legality of the exercise of power. It includes the following contents: First, the government abides by the law. That is to say, all organs and workers with executive power, power to issue orders, decision-making power and discretion must abide by the law as ordinary citizens, and must not go beyond the law or stand outside the law. Second, power must be limited. Power itself means a kind of ability, which, once not under any control, will be alienated into violence or centralization. Therefore, the role of law is particularly important and prominent here. The law should have clear rules to restrict and manage the exercise of power, and sufficient content to prevent abuse of power. Whether the law can be used and the corresponding system established, the scientific and effective restriction of power is an important symbol of the superiority of the social system and the degree of civilization. The spirit of the rule of law in Hong Kong is embodied in the fact that the executive organs obey the judiciary, that is, the executive organs of the government must respect and obey the law and the judgments of the courts in interpreting and enforcing the law. Third, it is no ultra vires, that is, ultra vires null and void. Illegal acts do not have legal effect, which is the counterevidence of "the government abides by the law". Ultra vires refers to the situation in which the exercise of all legal powers contravenes the Constitution, laws and regulations of higher authorities. For acts committed by government organs or government functionaries beyond their statutory powers, citizens may bring lawsuits in the courts, request the courts to impose sanctions on illegal government organs or government functionaries, or order the government to compensate citizens for losses incurred by illegal government acts, that is, for the illegality of the government. The people have an effective way to appeal for their activities. 3) The supervision of the exercise of power. In the legal framework of Hong Kong, the way of supervision of the government is multi-level and comprehensive, including the supervision of the Legislative Council, judicial supervision and extensive supervision of public opinion. In accordance with the basic law and relevant laws, Hong Kong adopts a three-power separation model dominated by administration. The government, the Legislative Council and the judiciary are independent, decentralized and checked and balanced. The draft law is proposed by the government and examined by the Legislative Council. Although the Legislative Council does not have the right to propose laws on its own, it can "modify" the government's laws in a totally different way, thereby increasing its will. The Legislative Council also has the power to question the Chief Executive and even initiate the recall process. As far as an open question to former Chief Executive Tung Chee-hwa was concerned, many members of Parliament criticized Tung Chee-hwa's ability to govern and the measures taken by the government to solve the economic difficulties. Tung Chee-hwa and other government officials gave

detailed explanations and explanations to the members of Parliament. The questioning process was extensively covered by the Hong Kong media and even broadcast live on television. This means that the Legislative Council's supervision of the government is quite in place. Courts supervise the government mainly through administrative litigation and judicial interpretation, but the government has no right to dismiss judges. Every ordinary citizen can bring a lawsuit to the court to demand the withdrawal of the government's actions. Hong Kong is a free area of public opinion, and public opinion supervision is also strong. As long as all kinds of media operate legally, they have a place. This fully guarantees the supervision of the government from all walks of life, especially the degree of freedom of the media has hardly changed before and after the return, which is one of the reasons why all walks of life in Hong Kong support the central government.

2.3. Clean government guarantee mechanism

The connotation of a society ruled by law should include an honest government, which is the organ exercising administrative power on behalf of the state. If the government abuses the state power and engages in malpractices for personal gain, the rule of law cannot be discussed. The ICAC has played an important role in this regard. Before the establishment of the Independent Commission against Corruption in 1974, corruption in the public sector was rampant in Hong Kong and public resentment was rampant. Following the corruption and absconding incident of Chief Police Officer Gerber, the Hong Kong Government is determined to drastically reform the original anti-corruption system. The most significant adjustment in its leadership system is the establishment of the ICAC, which has been working effectively since then to make Hong Kong one of the most honest cities in the world. Its successful experience is as follows: First, the ICAC is accountable to the Chief Executive and integrates power and responsibility. In the investigation procedure, it also enjoys some concessionary powers, such as detaining the suspects before the court permits. Secondly, the ICAC does not belong to the government sequence, nor does it belong to the judicial sequence. The staff members do not have the status of civil servants, they are all employed, and they are open to the public. They have higher incomes during their employment. However, if they violate the law, they are easily delisted and do not need to perform strict procedures like civil servant delisting. The integrity of the ICAC staff is guaranteed. Thirdly, the provisions of Hong Kong law on the subject of bribery are different from those in the Mainland, which include not only public servants, but also managers in private organizations. At the same time, there is no lower limit on the number of cases.

In addition, the property declaration system, higher salaries and retirement pensions of public servants are also important foundations for their integrity. Before being appointed, civil servants, especially those of higher rank, should be separated from

their own business activities in accordance with the relevant provisions of the property declaration system in order to prevent the interpenetration of public and business activities and the private use of public rights. Property declarations should be made regularly during the working period to be subject to supervision. The salaries of public servants in Hong Kong are relatively high. The annual incomes of the Chief Executive and several directors are more than HK\$3 million. The annual income of ordinary judges is also more than HK\$1 million. After the retirement of civil servants, the pension is divided into two parts, one part is paid in one lump sum at retirement, and the amount is very high; the other part is a fixed pension drawn monthly according to the proportion of wages. Two pieces of income are enough to ensure that they have enough food and clothing after retirement. Good welfare system makes public servants value their careers more and more, which ensures that they are honest in government.

Without an honest government, there can be neither an honest society nor a society ruled by law. These two successful operations have made Hong Kong one of the most honest places in the world.

3. Strong legal awareness is the inherent guarantee of the rule of law in Hong Kong

Hong Kong has changed dramatically from a small fishing village to a world-renowned financial and trade center, shipping center and tourism center. Hong Kong people's awareness of the rule of law has played a huge role in promoting. On the one hand, in Hong Kong, both the government and the public are accustomed to solving problems in the form of laws and contracts rather than resorting to non-institutionalized political forms. In this way, the conflict of interests between people and between the government and the public can be guaranteed and coordinated by the rule of law, which cannot easily lead to political events, social unrest and conflicts, and ensure political stability. On the other hand, Hong Kong people own concept of law-abiding also promotes the process of the rule of law, walking on the streets of Hong Kong, which can be reflected everywhere. In every bus station, every elevator room, although there are many people waiting, people will queue up consciously, orderly, and rarely rush to the top. Even in busy areas, it is difficult to see garbage on the ground. Hong Kong people walk fast, work fast and eat fast, but there is little disorder in society. On the contrary, people feel orderly everywhere. This rule-of-law characteristic of universal compliance has greatly reduced costs, reduced friction and increased efficiency for Hong Kong's economic operation, which is one of the important reasons why Hong Kong can become a world trade, financial and shipping center. This kind of legal consciousness has already become a part of people's life. Everyone takes it for granted and develops a mature market economy in a virtuous circle.

The spirit of rule of law and the environment of rule of law in Hong Kong not only safeguard the rights of every economic entity and enable it to fully play its initiative and creativity, but also

restrict certain acts of the entity on a reasonable scale to avoid abuse of power. In Hong Kong, the cost of breaking the law is much higher than that of abiding by the law, and the enforcement of the law is very strong. Subjectively, people are unwilling to destroy the civilized social order. Hong Kong's economy has been able to create miracles because of its combination of subjective and objective factors. The rule of law has created an environment that encourages free competition and promotes free competition for the society. It has given people a driving force to participate in competition and seek personal development.

II. ENLIGHTENMENT FROM THE PROCESS OF RULE OF LAW IN HONG KONG

1. Rationality of the Essence of the Rule of Law

As mentioned earlier, Hong Kong was originally a small fishing village. Because of the influence of Chinese tradition, there was no awareness of the rule of law at the beginning. Therefore, the rule of law was forced to accept, rather than voluntarily. The evolution of the rule of law in Hong Kong is a process of changing from formal rule of law to substantive rule of law, that is, from forcing the formal rationality of law to paying more attention to substantive justice and fairness that the rule of law can achieve. This process is gradually changing with the development of social politics and economy. With the development of politics and economy in Hong Kong, British law has gradually been localized, and the spirit of rule of law in the West has gradually been accepted by Hong Kong people, and a strong concept of rule of law has been formed. The reason is that the integration of Western law with Hong Kong's political and economic development reflects the objective needs of social development and reflects the rationality of the rule of law. The process of rule of law in Hong Kong shows that in the process of development of the rule of law, we can neither totally deny the value of the spirit of rule of law in the West nor completely copy the Western model. Therefore, in terms of the construction of the rule of law in the mainland of China, as a late-developing market economy country, the construction of the rule of law must be combined with China's political and economic system, attaching importance to learning the advanced legal experience of western developed market economy countries, especially the transplantation of laws and the correct treatment of traditions, which deserve our deep consideration. First of all, we should pay attention to the organic contact between the transplanted legal system and the existing local legal system. In the process of legal transplantation, there will inevitably be friction and collision between the original legal system and the introduced legal system. How to eliminate the contradiction between the two? The transplantation of Hong Kong law into English law provides us with a vivid example. Hong Kong does not fully accept British law. Although Hong Kong law is no different from British law in terms of its legal structure and form, we can also see that many principles of British law that do

not apply to Hong Kong have been amended in the course of their use, such as the Royal Decree, which stipulates that "laws enacted by the British Parliament" The rules of law, common law and equity law shall be applied in Hong Kong, but they may be amended if necessary in Hong Kong. At the same time, in order to achieve better results in legal transplantation, we should also pay attention to the transformation of our own legal soil in the process of legal transplantation. In the process of legal transplantation, Hong Kong not only transplanted the tangible legal system of British law, but also paid attention to the transplantation of intangible legal spirit, which is also worthy of our reference. Secondly, in view of the legal tradition, we should absorb the essence of the tradition, which has been widely recognized by all. However, Hong Kong's experience also tells us that we should not reject the unreasonable aspects of tradition at once. After all, they all have their social bases. Traditionally, there will be a kind of inertia. If the inertia is forcibly excluded through a piece of legislation, it will only make the legislation lose its due authority because it has no social basis. The Hong Kong and British authorities have noticed this very well. While adopting the policy of gentleness, on the one hand, they will adopt a long-term one. The process overcomes the shortcomings of tradition. On the other hand, it uses its cultural advantages to guide the people and consolidate the achievements in a timely manner. This is worthy of our reference in the process of building the rule of law in the mainland.

2. Rationality of System Design

The society ruled by law is the goal that mankind strives for and pursues. In the process of the rule of law, it is difficult to realize the substantive rule of law without the support of a series of systems and principles. An important principle to promote and guarantee the realization of the rule of law is the principle of "separation of powers and checks and balances". Because the establishment of this principle has played a very good role in supervising the exercise of state power, if power is not supervised, the executor of any power may abuse it. Once the power is abused, it will destroy the whole social order, and once the order is destroyed by the authority, it cannot be governed. If legislators or law enforcers become practitioners of disrupting order, then there is no justice in society, and legislators or law enforcers have no right to require their people to abide by the laws they have enacted. The track of the rule of law process in the West and Hong Kong has been proved. In Hong Kong, the political system is based on the British model, but different from that in Britain, the system of "administrative-led" decentralization and checks and balances is implemented, and judicial independence is maintained. From the point of view of the relationship between administration and legislation in Hong Kong, the boundary is not clear, but the judiciary is independent. Although the Governor of Hong Kong has the power to appoint judges of the Supreme Court and other judges, removal from office is very difficult and judicial personnel

do not participate in the work of the Executive Council and the Legislative Council. In addition to various appeals and judicial organs, there are also legal aid systems in society. All these will help to strengthen the atmosphere of respecting the law and acting according to law and abiding by the law. After the handover, according to the Basic Law, Hong Kong still maintains an administrative-led political system and adheres to the principle of judicial independence, which is conducive to maintaining the continuity of the rule of law in Hong Kong. The development of the rule of law in Hong Kong shows that judicial independence is an important link to achieve legal justice. If the independence of judicial organs is not guaranteed, it will be difficult for judicial organs to realize the value of law in order to maintain social justice and fairness, as well as to establish public trust in justice and respect for legal authority. Therefore, judicial independence has become an international trend of social development. Therefore, in the process of socialist rule of law in our country, we must strengthen and guarantee the real realization of judicial independence through various systems in order to enhance the public's trust in justice and respect for legal authority.

However, due to the absence of the principle of "separation of powers", judicial power is exercised by the People's Court and the People's Procuratorate in the Mainland of China. Therefore, judicial independence in mainland China is different from that in Hong Kong. First, judicial independence in the West means that judicial power is totally independent of legislative power and executive power. The People's Congress system is implemented in the Mainland of China. The People's Congress is the organ of state power rather than a simple legislative organ. The executive and judicial organs are subordinate to the power organs, so the judicial power cannot be independent of the legislative power fundamentally, but of the executive power. Secondly, the judiciary should accept the leadership of the Communist Party of China. This is a political principle as well as a constitutional principle in our country. Thirdly, it is not only limited to judicial independence, but also includes procuratorial independence, which is determined by the legal supervision function and judicial attributes of procuratorial organs under the system of the People's Congress of China. It can be seen that judicial independence is compatible with China's national conditions, and the characteristics of judicial independence in China lie in the organic unity of the leadership of

the Party, the people's ownership of the country and the rule of law.

III. CONCLUSION

The rule of law is a symbol of modern civilization and an important factor in Hong Kong's success. Hong Kong was initially colonized to enforce the rule of law. However, this kind of colonization has been rationalized by Hong Kong's local culture, thus forming a rule of law with its own characteristics and adapting to Hong Kong's social and economic development. This shows that although there are differences in history, culture and economy between China and the West, there are common rules to follow in the historical process of rule of law. Therefore, in the process of building the rule of law in the mainland, we should sum up and draw lessons from some beneficial experiences in the development of human society ruled by law: we should learn from Western civilization ruled by law as well. The essence is to learn from Hong Kong's experience in the process of rule of law, and to combine with China's political system, economic development and other factors in order to achieve the goal of a socialist country ruled by law.

REFERENCE

1. Feilong Tian. One Country, Two Systems, the People's Congress interpretation and the formation of the new rule of law in Hong Kong [J]. *Political Science and Law*, 2017, 5: 23-36. (In Chinese) 田飞龙. 一国两制、人大释法与香港新法治的生成 [J]. *政治与法律*, 2017, 5: 23-36.
2. Shangjun Zhou, Hao Peng. Quantitative justice: A research report on the local rule of law index evaluation system [J]. *Law Review*, 2014, 3: 117-128. (In Chinese) 周尚君、彭浩. 量化的正义: 地方法治指数评估体系研究报告 [J]. *法学评论*, 2014, 3: 117-128.
3. Quansheng Wang. China's introduction of the rule of law index: problems and possible approaches [J]. *Political Science and Law*, 2015, 5: 2-14. (In Chinese) 汪全胜. 法治指数的中国引入: 问题及可能进路 [J]. *政治与法律*, 2015, 5: 2-14.
4. GAO Zhong. A preliminary study of the dualist paths of formalistic rule of law and substantive rule of law in HKSAR [J]. *Journal of Hunan University (Social Sciences)*, 2014, 11: 146-153. (In Chinese) 高中. 香港形式法治与实质法治二元发展路径初探 [J]. *湖南大学学报(社会科学版)*, 2014, 11: 146-153.
5. Jianxi Lian. The evolution process of rule of law in Hong Kong special administrative region and its enlightenment to the construction of rule of law in China [J]. *Public Administration & Law*, 2006, 12: 14-17. (In Chinese) 练建熙. 香港特别行政区的法治进化过程及其对我国法治建设的启示 [J]. *行政与法(吉林省行政学院学报)*, 2006, 12: 14-17.

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