International Journal of Law, Crime and Justice 64 (2021) 100438

Contents lists available at ScienceDirect

International Journal of Law, Crime and Justice

journal homepage: www.elsevier.com/locate/ijlcj

Democracy, constitutional framework, and human rights: A comparison of Monaco, Tonga, Hong Kong, and Singapore

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ARTICLE INFO

Keywords:
Democracy
Constitution
Civil liberties
Political rights
Human rights

ABSTRACT

This article examines constitutional protection of human rights, in particular civil liberties and political rights, in two democratic and two undemocratic regimes respectively. While the existing literature is consensual on the importance of constitutional democracy in upholding fundamental human rights, the discussion on authoritarianism is limited. This paper provides a comparative framework and suggests that not only do the constitutional democracies, namely Tonga and Monaco, perform well on constitutional human rights protection, Hong Kong and Singapore, both undemocratic, also demonstrate a similar level of protection on paper. Combining with their performance on human rights protection, it is argued that constitutional provisions in both democratic and authoritarian states carry limited significance, but how constitutions are interpreted and implemented matter the most.

1. Introduction

Existing literature on constitutional democracy has long recognized the importance of the constitution to limit the powers of government and uphold the protection of human rights (e.g. Walker, 1988; Rosenfeld, 2001). The discussion fundamentally focuses on the regular and competitive elections to keep the government in check (Jackson, 2016), spread of the values of liberalism and constitutionalism (Lassen, 2017) and execution of the rule of law (Freeman, 1990). In contrast, the exploration of constitutional authoritarianism has yet to be comprehensively explored. As argued by Bugarič (2015), a constitution exists in nearly all regimes, but actual implementation is different ranging from democracies to authoritarian regimes. Theoretically, although the constitution in authoritarian states also incorporates democratic elements on how to limit the government and protect human rights, it only adopts legal thoughts and constitutional jurisprudence to reinforce authoritarianism (Henderson, 1991). The research question is to examine what are the differences of constitutional laws between the two diversified types of regime and what factors contributes to the difference. This paper attempts to compare two constitutional democracies and two constitutional authoritarian regimes and generate empirical findings to examine this question.

This article focuses on four cases, namely Monaco, Tonga, Hong Kong and Singapore. Monaco and Tonga are categorized as "constitutional democracies".[1] In the Principality of Monaco, a constitutional monarchy, the Prince, has substantial legislative and

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[1] Although it might be argued that both Monaco and Tonga are not "full" democracies, they will be regarded democratic for the purpose of this article.

https://doi.org/10.1016/j.ijlcj.2020.100438
Received 12 January 2020; Received in revised form 4 September 2020; Accepted 23 September 2020
Available online 12 November 2020
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executive authority to be exercised in compliance with the Constitution and laws. Given its high degree of civil liberties and political rights, the Freedom House rates Monaco as a "free" country. The Kingdom of Tonga is also a constitutional monarchy once described as a royal dictatorship (Cheibub et al., 2010) in the past due to the power wielded by the King and the partly hereditary nature of the legislature. Nevertheless, following the recent liberalization, it has been rated as a "free" country by Freedom House since 2012 (Freedom House, 2020). Hong Kong and Singapore are selected with the category of "constitutional authoritarian regimes". Under the "one country two systems" arrangement, Hong Kong enjoys a certain degree of autonomy from China and may maintain its extant political and legal systems. However, Hong Kong retains a liberal authoritarian status given its limited electoral franchise in both executive and legislative branches but a certain degree of civil liberties is protected (at least before the rapid deterioration in recent years). Based on the classification of Freedom House (2020), Hong Kong can be classified as a "partly free" region. The Republic of Singapore is also a "partly free" case (Freedom House, 2020), combining regular elections which are dominated by the ruling People's Action Party and suppression of political freedom. Some identify it as "illiberal democracy" (Mutalib, 2000) whereas others use "liberal autocracy" (Siaroff, 2013; El-Affendi, 2013) due to its questionable fairness of elections and partial restrictions on freedom.

This study compares two constitutional democracies and constitutional authoritarian regimes. This paper is divided into five sections. It starts with a literature review of constitutional democracy and authoritarianism. The second section explains the comparative framework with key aspects and indicators. The third section discusses the case selection principles and methods in detail. The fourth section compares the constitutional laws in four cases in the aspects of civil liberties and political rights. The final section discusses and compares the key differences in political performance in constitutional implementation.

2. Democracy, constitution, and human rights protection

A constitution, either formal/written or informal/unwritten, refers to the set of principles based on which a state is governed and sets out the rights of the people (Dicey, 1915). In principle, the ultimate goal of a constitution is to (1) limit the government and (2) uphold the human rights of the people (Habermas and Rehg, 2001). The constitution sets up the government structure, explains the power of the government and lists the division of power between different branches of government: an executive branch to design and carry out the law, a legislative branch to approve law and a judicial branch to interpret law (Cheibub et al., 2015). Existing literature has long recognized that constitutions exist nearly in all countries, and the actual effect of human rights protection can be reflected by the political system.

In democratic regimes, a positive relationship is generally found between the constitution and the protection of human rights (Walker, 1988; Rosenfeld, 2001). Such regime emphasizes political equality while people can directly or indirectly elect the head of executive branches and legislators to represent them. This can primarily be explained by people's ability to keep the government in check through regular and competitive elections and prevent the domination of a small number of political elites (Jackson, 2016). Secondly, democracies are also favorable to the promotion of values of liberalism and constitutionalism such that people's rights and needs are more likely protected while providing an alternative mechanism of control which weakens the justification of using coercion (Lassen, 2017). Thirdly, democracies tend to have a more established judicial system with an independent branch to appeal and review the constitution's execution (Freeman, 1990). In other words, "rule of law" is also an important factor in ensuring that laws are followed, victims are compensated, and violators are punished. Judicial systems, through upholding the principles of the rule of law, play an integral part in the protection of human rights by interpreting and applying relevant laws against the government (Hunt, 1999). Thus, scholars generally agree to adopt the term "constitutional democracy" to explain government being limited by legal and institutional means whilst the rights of people are respected (e.g. Mueller, 1996; Tully, 2002).

In contrast, the literature tends to point to a negative relationship between constitutions and human rights protection among non-democracies (Møller and Skaaning, 2010; Wan, 2007). By definition, authoritarianism refers to a regime with a deficiency in civil liberties and political rights (Diamond, 2002; Levitsky and Way, 2010). Such regimes can be classified into two categories: (1) an electoral authoritarian regime where political rights, in terms of regular and competitive elections, are largely available but civil liberties for people are limited with regards to political mobilization, expression, and press freedom; (2) a liberal authoritarian regime is the reverse, with political rights to vote in elections being limited but civil liberties are largely respected. Thus, political inequality exists while only a small number of elites gain political privileges while the general public is excluded from elections.

Comparative constitutional studies have argued that constitutional frameworks exist in nearly all regimes, but the purpose of drafting a constitutional document is not necessarily to "tie the rulers' own hands" (limit their own power) or protect the fundamental rights of the people (Baudoin, 2006). Theoretically, authoritarian regimes tend to dominate political institutions in order to sustain an undemocratic system because this political system is favorable to a particular political party or people while democratic regimes tend to engage in political institutions to maintain their party's sustainability (Schedler, 2002). Although the constitution in authoritarian regimes mostly lists some democratic elements (e.g. freedom and human rights protection), they are mainly used to reinforce authoritarianism (Henderson, 1991). Thus, scholars adopt the terms "constitutional authoritarianism" to explain that an authoritarian government is beyond the legal means and the rights of people are suppressed even though a constitution exists (Law and Versteeg, 2013).

Under constitutional authoritarianism, two features are recognized. First, the aim of the constitution is not to limit the government as the government holds a supreme position above the constitution (Kim, 2015). Non-democratic regimes often attempt to increase their legitimacy and regime stability by dominating power across all government branches. The executive branch attempts to manipulate the judiciary by changing laws, calling for judicial deference or pressurizing judges (Moustafa and Ginsburg, 2008) whilst the judiciary which may also be manipulated by the executive branch has limited power to monitor all government branches (Moustafa, 2014; Balasubramaniam, 2009). The restraints of government and independent judiciary are limited. People cannot appeal

to the judges' self-image of defenders of the law or rule of law, leading to a review of illiberal laws. Secondly, institutions mostly use constitutions to suspend the fundamental rights of people (Hernandez, 1985). The right to organize and engage in political participation such as political parties and social mobilization is proscribed due to its political threats and challenges to regime. Similarly, new laws are established and existing laws are amended in order to arrest and suppress the opposition in the name of upholding the constitution. This paper compares two democracies and two authoritarian regimes respectively to evaluate the line between constitutional provisions and political realities in different regime types.

3. Comparative framework and analysis

The conceptual framework of this study is presented in Table 1. With reference to the Universal Declaration of Human Rights ("UDHR"), the International Convention on Civil and Political Rights ("ICCPR"), and the International Convention on Economic, Social and Cultural Rights ("ICESCR"), two types of human rights are studied. Each of the civil liberties and political rights concepts will be further measured by a set of standard indicators, which will be assessed across all cases for a comparative assessment.

The conceptual framework is divided into five aspects: Three perspectives pertain to civil liberties and two political rights. For civil liberties, the first concern is rights to life, liberty, and security focusing on basic human rights protection. The second is the right to a fair trial which concentrates on fair judicial protection and the third one is freedom of opinion which considers the right to giving opposing views. For political rights, the first concern is political participation, that is, the freedom of assembly and right to elect their political representatives. The second one is formality to explore the transparency and procedures of the government.

In total, 15 indicators are devised among five perspectives which are examined in all four cases. A score of one is given when the relevant provisions in constitutional documents are clearly specified while zero is given when no such declaration exists. A 0.5 is given when the declaration is ambiguous. Thus, the scale of this framework is from 0 to 15. The primary source of data was the constitutional documents in the four regimes, namely the Constitution of Tonga (COT) in Tonga, Constitution of the Principality of Monaco (COP) in Monaco, Constitution of the Republic of Singapore (CRS) in Singapore and the Basic Law (HKBL) in Hong Kong, supplemented by other overseas and local documents. It is admitted that given the wide-ranging scenarios and factors underlying each aspect, the classification is unavoidably arbitrary to an extent, though we try our best to base our judgment on factual and objective evidence.

3.1. Case selection: most different cases comparison

This paper selectively focuses on four cases for comparison. The selection is made on methodological and empirical grounds. First, the four cases were picked according to the most different method, employing a minimum of two cases that are different regarding the measured independent variables but with similar outcomes of dependent variables (Seawright and Gerring, 2008). It emphasizes the "method of agreement" which explores cases with different features but similar outcomes (Bennett, 2012). The method is applied on both pairs of democratic/authoritarian regime, resulting in the four cases picked (see Table 2).

In addition to this methodological consideration, the four cases are similar in several aspects. First, Monaco, Hong Kong, and Singapore are city-states in Europe and Asia (despite Hong Kong not having full sovereignty) while Tonga is an archipelago in the Southern Pacific. With the exception of Monaco, they were all historically influenced by the British legal system. All of them are high-income or upper-middle-income (Tonga) economies (following World Bank classifications). Second, the four cases specifically perform quite well *given* the respective political system they have. A summary can be found in Table 1 with data from the Freedom House (2020), which classifies regimes based on their level of political rights (elections and contestation) and civil liberties (freedom). As a lower score (on a scale of 1–7) represents a better performance, it can be seen that all four cases demonstrate a better performance in civil liberties than political rights, which is actually not a common combination in the world. A similar point can be made about human rights protection, as shown in the plot of Human Rights Score (Schnakenberg and Fariss, 2014)[2] against political rights in Fig. 1.[3] It can be seen that these cases tend to out-perform other cases not in the absolute sense (as democracies would offer the best human rights protection), but in comparison to other systems of similar nature.

4. Comparative constitutional law: civil liberties perspectives

Civil liberties protect a person against extensive interference from the government. Here freedom of movement, including the right to enjoy asylum (UDHR Art.13–14, ICCPR Art.12–13), is omitted as the article focuses on domestic human rights obligations, while right to property is not discussed as its protection in all four regimes is similarly satisfactory.

4.1. Right to life, liberty and security

The right to life, liberty and security is one of the most fundamental rights and, thus, is non-derogatory. It is protected through the prohibition of the death penalty (UDHR Art.3, ICCPR Art.6), slavery and forced labor (UDHR Art.4, ICCPR Art.8), torture and cruel,

[2] The Human Rights Score is a latent measurement of human rights ranging from −3 to +3. It captures the dimensions of physical integrity (e.g., disappearances, political imprisonment) and empowerment (e.g., civil, political, and social rights) (Schnakenberg and Fariss, 2014).

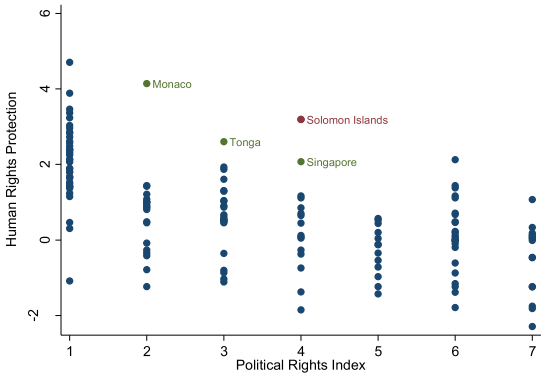
[3] The political rights component of the Freedom House index is used because the other dimension, civil liberties, conceptually overlaps with human rights protection.

Table 1
Conceptual framework of civil liberties and political rights.

Civil Liberties	Right to Life, Liberty, and Security
	Right to Fair Trial
	Freedom of Opinion
Political Rights	Political Participation
	Formal Legality

Table 2
Case selection.

	FH Political Rights	FH Civil Liberties	FH Regime Type	WGI Rule of Law Index (Rank/196)	Human Rights Scores (Rank/152)
Hong Kong	5	2	Partly Free	1.68 (15)	/
Monaco	2	1	Free	0.94 (37)	4.14 (2)
Singapore	5 (2005) -> 4 (2015)	4	Partly Free	1.78 (11)	2.07 (26)
Tonga	5 (2005) -> 2 (2015)	3 (2005) -> 2 (2015)	Partly Free - > Free	−0.02 (83)	2.61 (14)



Note: Data refer to the year 2011. Human Rights Score from Schnakenberg and Fariss (2014). Political rights index taken from Freedom House (2016). A lower score represents a better performance in political rights. Data of human rights not available for HK.

Fig. 1. Democracy and human rights protection.

inhuman or degrading treatment (UDHR Art.5, ICCPR Art.7), and arbitrary arrest or detention together with a right to be treated with humanity during any detention (UDHR Art.9, ICCPR Art.9–10).

All the four regimes under study generally respect the constitutional prohibition against deprivation of life. Both Tonga and Monaco record no occasion of arbitrary arrest and detention, but Singaporean laws allow preventive detention without trial. The maximum period of detention is 2 years when a person is determined to pose a threat to national security (the Internal Security Act [ISA]), or 1 year when a person is believed to be involved in criminal organizations, narcotics, etc. (the Civil Law Act [CLA]), and both the ISA and CLA are capable of unlimited renewal (United States Department of State [USDOS], 2016a). One cannot challenge the substantive basis of his/her detention under the ISA by judicial review, and may only make an application to the advisory board (USDOS, 2016a). There have also been reports of arbitrary arrest in Hong Kong.

The Tonga Supreme Court recognizes the absolute prohibition of torture despite its lack of ratification of the Convention Against Torture (Human Rights Council [HRC], 2012). The laws in Monaco and Hong Kong, however, suffer from inadequacy in protecting detainees against torture, thereby creating difficulty in the recognition of the non-derogable nature of this right (HRC, 2013; United Nations Committee against Torture, 2016). Loopholes allowing the use of torture in 'exceptional circumstances' in both regimes exist, such as by providing a defence of "lawful authority, justification or excuse" in the Hong Kong Crimes (Torture) Ordinance (Sect. 2(1),3 (4)) and by the lack of clarity in the Criminal Code of Monaco regarding the definition of torture and the lack of invalidation regarding statements obtained by torture (United Nations Committee against Torture, 2016; 2017). Meanwhile, Singapore maintains caning as a regularly implemented punishment (USDOS, 2016a; HRC, 2016).

Tonga and Singapore generally provide prison conditions that meet international standards. There have, however, been reports that prisoners in Monaco lack outdoor exercise and routine medical examination (USDOS, 2016a; United Nations Committee Against Torture, 2017). In Hong Kong, the maximum length and vagueness of grounds regarding solitary confinement may amount to inhuman treatment (United Nations Committee against Torture, 2016), while impartiality of the Independent Police Complaint Council, which ensures that detainees' complaints are investigated, is doubted due to the Chief Executive's exclusive right to appointment (HRC,

2013) and the fact that investigations are carried out by the police themselves to the exclusion of the council.

4.2. Right to a fair trial

The right to a fair trial guarantees equality before the law through establishing the principle of "presumption of innocence" (UDHR Art.7,11; ICCPR Art.14–15), the right to a fair and public hearing (UDHR Art.10), the prohibition of ex post facto laws (ICCPR Art. 15) and the right to a remedy where one's rights are violated (UDHR Art. 8).

Although judicial independence is enshrined in the constitution in all four regimes (COT Art. 15; COP Art. 88; CRS Art. 65; HKBL Art. 19,63,85), only Monaco is noted to have generally observed its people's constitutional rights to a fair trial (USDOS, 2016a) despite the Prince's power to appoint and dismiss Supreme Court members (COP Art.89). Meanwhile, the King of Tonga, through dissolving the Judicial Services Commission in 2010,[4] has control over the appointment, investigation, and removal of judges (USDOS, 2015, 2016). Parliament struggled to take back power as the King and his Privy Council enforced their powers to withhold assent to laws.[5]

Similarly, the President and the Prime Minister of Singapore maintain much control over the judiciary. The Singapore Supreme Court and its subordinate courts hold the judicial power (CRS, Art. 65), but the President may dismiss Supreme Court judges and the Attorney-General (CRS Art 35, 98(3)). Accordingly, the judiciary's impartiality has been constantly questioned in instances where the government or the ruling party is involved (USDOS, 2016a). Singapore also constitutionally authorizes laws which allow the executive to exercise discretion in excluding people's right to judicial review, such as in cases of preventive detention (USDOS, 2016a), thereby causing difficulties for the people to seek remedies against the government when they feel their rights have been violated.

Although judges in Hong Kong can only be dismissed for inability to discharge their duties or misbehavior on the recommendation of a tribunal (HKBL, Art. 89), judicial independence is weakened due to the general and unqualified power of the Standing Committee of the National People's Congress of China (NPCSC), a non-judicial body, in interpreting and proposing bills to amend the Basic law (HRC, 2013) under HKBL Articles 158 and 159. The NPCSC has already invoked such power to interpret the Basic Law five times since 1997 to interpret the Basic Law before and after making its legal judgment. In addition, concerns over deprivation of the right to legal assistance in Hong Kong were also raised as only 39 out of 511 protestors detained selectively after a protest in 2014 (United Nations Committee against Torture, 2016).

4.3. Freedom of opinion

Freedom of thought, conscience and religion is another non-derogable right under the UDHR and ICCPR (UDHR Art.18, ICCPR Art.18). All the four regimes constitutionally respect the freedom of religion subject to minor restrictions (USDOS, 2016b). For instance, Monaco only sets up Catholic public schools (as 90% of the population is Catholic) while Tonga restricts operation of business on the Sabbath, enforces a ban on bakeries, and confines preaching on television to mainstream Christian tradition. In Singapore, Jehovah's Witnesses and the Unification Church are banned while job applicants have protested against discriminating against dress codes in the workplace. Hong Kong placed restrictions on Falun-gong by revoking a license for NDT-TV (USDOS, 2016b).

Freedom of opinion also encompasses the freedom of expression (UDHR Art.19, ICCPR Art.19), which is usually extended to include the freedom of the press. All the four regimes constitutionally protect the rights to freedom of expression and press and permit the existence of independent media and generally unrestricted internet access (USDOS, 2016a), though they each employ other ways to restrict their citizens' freedom of opinion to various extents. Freedom of expression can be impeded by criminalizing defamation, especially of public figures. Such restriction can be found in both Monaco and Singapore, the former through the Monegasque Criminal Code (HRC, 2013) which imposes a maximum of 5 years of imprisonment for publicly denouncing the ruling family (USDOS, 2016a) – the latter under Penal Code Chapter 21, a tool the government frequently employs for what it regards to be personal attacks on the officials (HRC, 2016; USDOS, 2016).

State influence may hinder freedom of the press by causing self-censorship. Constitutionally, the promise of freedom of the press is guaranteed among the four cases (COT Art. 7; COP Art. 23; CRS Art. 14(a); HKBL Art. 27), but the practices are different. The government-owned Tonga Broadcasting Commission (TBC), the largest broadcaster in Tonga, directs censors to review all its programming prior to broadcast (USDOS, 2016a), and prevented broadcasting of certain campaign speeches and protests in 2008 and 2006 respectively (HRC, 2012). In April 2016, Viola Ulakai, Head of Programming and News at TBC, was suspended by the first democratically elected Prime Minister for asking him hard questions about educational reforms pushed through without consultation, who claimed that Ulaki created "unnecessary tensions" and her questions were "tailored by political opponents". Similarly, the Singaporean government indirectly controls the two most influential media companies, MediaCorp and Singapore Press Holdings Limited, and operates all domestic broadcast television channels (USDOS, 2016a). In Hong Kong, freedom of the press is repressed due to the increase of pressure over Hong Kong media, and police and protestors' violence towards journalists. Media takeover and the concern for advertising revenue brought an editorial shift or even self-censorship.

[4] Pavan Amara (17 July 2010) Tonga Overturns British judge's flogging sentence. Independent URL =< http://www.independent.co.uk/news/world/australasia/tonga-overturns-british-judges-flogging-sentence-2029421.html > (Accessed 28 Oct 2017).

[5] Tonga's new constitution is the worst in the Commonwealth Pacific Institute of Public Policy URL =<http://pacificpolicy.org/2014/08/tongas-new-constitution-is-the-worst-in-the-commonwealth/> (Accessed 26 Sept 2017); Tony Wall and Blair Ensor (10 Nov 2016) Corruption in Paradise: Former Attorney General of Tonga questions NZ judicial aid stuff.co.nz URL =< http://www.stuff.co.nz/world/south-pacific/86197503/Corruption-in-Paradise-Former-Attorney-General-of-Tonga-questions-NZ-judicial-aid> (Accessed 20 Jan 2017).

Finally, governments may restrict free speech by limiting the topics which are open for discussion. The Singaporean government imposes significant restrictions on expressions that "would undermine social or religious harmony" (USDOS, 2016a). In addition, the Internet Code of Practice, enacted by the Media Development Authority, regulates all internet content providers to ensure that no prohibited materials are broadcast (HRC, 2016; USDOS, 2016a). In Hong Kong, the National People's Congress of the Chinese government arguably has set up a national security mechanism for Hong Kong based on HKBL Article 18 and Annex III which is directly applied in Hong Kong. The law is designed to limit free speech by claiming that actions and events of "Hong Kong independence" amount to sedition or treason contrary to the Crimes Ordinance, which recently has aimed to limit the spread of information.

5. Comparative constitutional law: *political rights perspectives*

Political rights include the freedom of peaceful assembly, the freedom of association (UDHR Art.20; ICCPR Art.21–22), the right to participate in political life (UDHR Art. 21; ICCPR Art.25) and formal legality (ICCPR Art. 5).

5.1. Freedom of peaceful assembly

Constitutionally, there is little restriction over the freedom of peaceful assembly and association in Tonga (COT Art. 8) and Monaco (COP Art. 29) while peaceful assembly is also allowed in Hong Kong (HKBL Art. 35) and Singapore (CRS Art. 14(b)). However, in Singapore, the Constitution permits restrictions against assembly, and all public assemblies require police permission. Moreover, the Speakers' Corner is the only outdoor venue which permits citizens to give public speeches or organize public events without a Public Entertainment Licence, although a police permit must still be obtained (USDOS, 2016a). While freedom of assembly and association is generally respected in Hong Kong, the increasing use of video recording and arrests against protestors is resulting in excessive restriction of the freedom (HRC, 2013). For instance, the Hong Kong government recently invoked the Emergency Regulation Ordinance to pass a regulation forbidding the use of face masks in public assemblies in the name of assisting the police in its law enforcement.

5.2. Right to participate in political life

Tonga and Monaco are constitutional monarchies under which the monarch retains significant power.[6] The executive of Tonga is headed by the Prime Minister and his Cabinet, elected by the Legislative Assembly and Prime Minister respectively among the elected representatives, and appointed by the King (COT s50A (1)). "The elected representatives" include nine representatives chosen from among 33 nobles in Tonga and 17 representatives elected through universal suffrage (COT ss.60,65). The Legislative Assembly can remove the Prime Minister by passing a "vote of no confidence" and impeach any elected representatives (COT ss.50B,75), and the King may remove the Cabinet on the recommendation of the Prime Minister (COT s51). The legislative power belongs to the King and the Legislative Assembly, composing the elected representative (COT s59). The King's sanction is required for a passed bill to be effective (COT ss41, 56) and his refusal will preclude the Legislative Assembly from discussing the same bill again in that session (ACT s68). The King also has the power to dissolve the Legislative Assembly (COT ss31A,38,54).

In Monaco, executive power is exercised by a four-member Government Council appointed and overseen by the Prince (COP Art. 43,44). Sovereign ordinances and ministerial decrees are debated in the Government Council and require the Prince's signature to take effect (COP Art. 45,47). However, matters involving the royal family, directions of the Judicial Department, dissolution of the National Council, or appointment of important positions are excluded from debate and instead are decided by the Prince and the Crown Council, members of which are chosen by the Prince and the National Council (COP Art. 46,75,77). Legislative power in Monaco is jointly exercised by the Prince and a National Council elected by universal suffrage (COP Art.4,53). The National Council meets for two sessions annually to vote upon laws initiated by the Prince, who has the sole authority to do so (COP Art 58,66). Upon consultation of the Crown Council, the Prince may dissolve the National Council and order a re-election within three months (COP Art. 74).

Although Singapore practices suffrage, the stringent and volatile requirements on the eligibility for presidential candidacy and the wide powers of the President and Prime Minister underlie its authoritarian tendencies. The executive is led by the President (CRS Art. 17, 23). A person can only be eligible for presidency if he/she is not a member of a political party and "satisfies the Presidential Elections Committee that a person of integrity, good character and reputation" (CRS Art.19(2)). In addition, a person must have held office for 3 years as head or chief executive of a government body, key statutory board, or company which has a minimum amount of SGD500 million in shareholders' equity (CSR Art.19(3)(a)-(b), (4)(a)). Such requirements can however be amended and increased (but not reduced) by the Legislature (CSR Art. 19(6), (7)), and in fact the requirement regarding shareholders' equity only recently increased five-fold from SGD100 million in 2016. The legislative power is vested in Parliament and the President (CRS Art. 38). Parliament is elected by the people (CRS Art. 39) and the Cabinet is collectively responsible to Parliament (CRS Art.24). Parliament can overrule any presidential veto power exercised contrary to his advisory council's recommendation (CRS Art. 37IF), while the President may withhold his assent to any Bill except Bills related to constitutional amendment and may dissolve Parliament at any time (CRS Art. 22H, 65).

While Hong Kong's sovereignty belongs to China (HKBL, Art. 12) and accordingly has to be accountable to it (HKBL Art. 43), the arrangement places further constraints on the already unrepresentative political system. The Chief Executive is not selected through

[6] The Economist Intelligence Unit (2015) Tonga: Political Structure, My EIU, URL = < http://country.eiu.com/article.aspx?articleid=1003322084&Country=Tonga&topic=Summary&subtopic=Political+structure#> (Accessed 10 Sept 2017).

universal suffrage, but by election among 1200 members from selected sectors (HKBL Art. 45, Annex I). Moreover, the Chief Executive and principal officials of HK require appointment from the Central People's Government in China (HKBL Art. 15). Legislative power is vested in the Legislative Council (LegCo) (HKBL Art. 66), in which half of the members are elected by universal suffrage (Geographical Constituency), while the other half represent sectoral interests (the Functional Constituency) (HKBL Annex II). The NPCSC has the right to invalidate any laws passed by LegCo which are related to affairs within the responsibility of the PRC authorities (HKBL Art. 17) and may apply national laws to Hong Kong in regard to such matters (HKBL Art.18).

5.3. Formal legality

The Tongan constitution prohibits the making of retrospective laws that may curtail or affect existing rights or privileges (COT Art.20), while both the Monegasque and Singaporean constitutions provide that criminal laws cannot have a retroactive effect and that no person shall be liable to a heavier penalty than prescribed by law at the time the crime was committed (COP Art.20, CRS Art.11(1)). The same right applies to Hong Kong, through Article 12 of the Bill of Rights. As to certainty and accessibility, laws have to be published in the Journal de Monaco, the Subsidiary Legislation of Singapore, or the Gazette (Tonga and Hong Kong) respectively to become effective, and are publicly and conveniently assessable.[7]

Legislative procedures in passing or amending the law are also significant in promoting legal certainty and stability. The regularity of legislative procedures, over matters such as quorum, business of the legislature, and the way the legislative debates, and motions and voting are administered, in all four regimes is maintained by laws (i.e. the Rules of Procedure of the Legislative Assembly of Tonga, Act no. 771 of July 25, 1964 in Monaco, Standing Orders of the Parliament of Singapore, and the Rules of Procedure of the Legislative Council of Hong Kong (Cap 2501)). This prevents the government from arbitrarily imposing or changing the laws and also allows opportunities for debates over any ambiguities or loopholes in the laws before they become enforceable.

Overall, Table 3 summarizes the above discussion for each aspect into scores from 1 to 0 regarding the comparative constitutional laws on both civil liberties and political rights. The findings indicate that all four regimes perform well on these aspects. In the two democratic regimes, Tonga performs the best with 14/15 while Monaco scores a 13.5. This is followed by Hong Kong with a figure of 13.5 whilst Singapore scores 13/15. The results reflect that the difference among constitutions between democracies and authoritarian regimes is not very large.

5.4. Explanations on the most different cases: capacity of check and balance between government branches

Although constitutional law lists and guarantees the civil liberties and political rights of citizens in a regime, as mentioned by Bugarič (2015), the key to determine its explanation and implementation depends on the government branches. Politically, the executive branch is mainly responsible for law decision-making based on the constitution and the legislature is mainly for monitoring and approving the law while the judiciary should be responsible for interpreting laws and handling appeals. Under the principle of the rule of law, government actions have to be authorized by law while unlawful actions are judged by the courts (Skaaning, 2010; Chesterman, 2008). Thus, the key of constitutional law in practice can be explored by check and balance.

In Tonga, the constitutional law which is practiced can be attributed to the effective check and balance in this democratic regime. The legislature maintains the power to remove the Prime Minister by a vote of no confidence, a motion which was raised in 2017 (but failed to secure majority support) due to the financial mismanagement, incompetence and nepotism of the government,[8] although reservation of seats for nobles reflects the checks and balance in practice. Meanwhile, judicial review has been applied to restrain government actions, and has successfully quashed Ministries' decisions regarding employment issues (e.g. Ministries in Fa'oliu v PSC) and deportation orders (e.g. Thomas Pedras v the Prime Minister of Tonga). However, the monarch still enjoys wide discretionary power under the constitution, and such power has been exercised to dismiss the Cabinet and Parliament after the Prime Minister survived the 2017 no confidence motion (The Diplomat, Aug 31, 2017).

Similarly, although the Prince's authority in Monaco is subject to the Constitution and laws (COP Art. 12), and separation of powers is guaranteed under COP Art.6, the Prince's power extends across all branches of government (COP Art. 3,5,43). The Prince's executive powers are only restrained by requirements to act on the basis of ministers' proposals or consult advisory bodies (COP Art. 46,74). The legislative powers, though subject to the National Council's ultimate power of veto, are not effectively restrained in practice due to the lack of ministerial accountability (COP Art.67, the Venice Commission, 2013). Meanwhile, the judiciary in Monaco is largely competent, living up to European standards (Venice Commission, 2013), and has jurisdiction to review the constitutionality of ordinances made by the Prince (COP Art.14,90B).

However, although both Singapore and Hong Kong receive high scores in relation to constitutional laws, the existing undemocratic status reflects the problems of check and balance. There is little separation of powers between the executive and the legislature in Singapore, given that the Prime Minister, whose ruling party has control over Parliament, holds most of the executive power and most decisions of the President require the advice of the Prime Minister (CRS Ch.2). The Prime Minister's control over election laws, space for social activities and media, in turn, means that the ruling party can manipulate both presidential and parliamentary election results,

[7] Such as online. https://ago.gov.to/cms/(Tonga); http://www.legimonaco.mc (Monaco); https://sso.agc.gov.sg (Singapore); https://www.elegislation.gov.hk/(Hong Kong).

[8] The Diplomat (31 Aug 2017) King of Tonga Dismisses Prime Minister Pohiva's Government URL =<https://thediplomat.com/2017/08/king-of-tonga-dismisses-prime-minister-pohivas-government/> (Accessed 20 Jan 2018).

Table 3
Summary of Comparative Constitutional Law (0 = no at all, 0.5 = a certain degree, 1 = absolutely).

		Tonga	Monaco	Singapore	Hong Kong
Civil Liberties					
Rights to Life, Liberty and Security	Right against death penalty	1	1	1	1
	Right against arbitrary detention/arrest	1	1	1	1
	Right against torture and right to reasonable prison condition	1	0	1	1
Right to Fair Trial	Judicial Independence	0.5	1	0.5	0.5
	Right to remedy for violation of rights	1	1	1	1
	Right to legal assistance	1	1	1	0.5
Freedom of Opinion	Freedom of religion	0.5	1	1	1
	Decriminalizing defamation	1	0.5	0.5	1
	Freedom of Press	1	1	1	1
	Lack of legal restriction	1	1	0.5	0.5
Political Rights					
Political Participation	Freedom of assembly	1	1	1	1
	Right to participate in political life	1	1	0.5	1
Formality of Legality	Prospective	1	1	1	1
	Publicized	1	1	1	1
	Legislative procedure	1	1	1	1
Total		14	13.5	13	13.5

and thus continue to remain in power (Rodan, 1998). Although the court has power to strike out unconstitutional laws (Mohammad Faizal v Public Prosecutor), laws can be written in a way that preclude judicial review except for procedural impropriety (e.g. the ISA), and a large degree of deference to the executive is traditionally exercised.

In Hong Kong, bills proposed by the government require passage through the Legislative Council and are subject to review by the judiciary (HKBL Art.19,73). There have been instances where the Legislative Council has successfully held off government bills (e.g. the political reform proposals in 2005 and 2015) and where courts have judged the government's actions unconstitutional (e.g. on the rights of performance during demonstrations, T v Commissioner of Police). However, the limitation on legislative councillors' power to move bills, the different voting systems for bills moved by government and Legislative Council members, the imbalance of power caused by the Functional Constituency, and the NPCSC power of interpretation of the HKBL (as mentioned above) largely weaken the effectiveness of such restraints (e.g., Wong, 2017).

6. Conclusion

Existing literature generally focuses on the role of constitutions in democracies and assumes that the legal document can uphold human rights and limit the government (e.g. Walker, 1988; Rosenfeld, 2001). However, corresponding investigation on authoritarian regimes is not plentiful, and comparative studies on both regime types are limited. From this perspective, this study attempts to build a theoretical framework to compare the provisions in constitutional laws. The framework has been used to analyze two democratic and authoritarian regimes. In each of the four cases, 15 indicators related to civil liberties and political rights were studied for comparison. The findings indicate that Tonga and Monaco, two democratic regimes, perform the best while Hong Kong and Singapore, two authoritarian regimes, also do well on paper.

The results contribute to the argument that the declarations of constitutional law in both constitutional democratic and authoritarian states have no significant difference in regard to nominal human rights protection, but the main difference is how the states interpret and implement constitutions (democratic vs. authoritarian regimes). Thus, the fundamental difference is based on the check and balance capacity. The level of limited government is positively related to their relative level of civil and political human rights, and thus regime type. On paper, Hong Kong arguably has the highest level of separation of powers, with judicial independence expressly guaranteed, followed by Singapore, where the power of the Prime Minister spans the executive and legislative branches. In contrast, Monaco and Tonga both provide a constitutional framework of unduly wide discretion, giving the monarch power to control all branches of the government. However, in practice, Monaco best upholds the separation of powers, since the Prince of Monaco seldom exercises his discretion and generally respects the decisions of the respective departments, whereas the Singaporean government conversely takes advantage of the power granted by the constitution to amend laws in its favour despite a seemingly liberal constitutional framework.

The main conclusion is to argue that the restraints of the government decide the regime type rather than the written constitution. The danger in such non-democratic regimes is that the status of human rights can be unstable and can be subject to volatile changes whenever the ruler exercises arbitrary powers bestowed upon them by their constitutions and laws or the right of the NPCSC to apply national laws in Hong Kong (HKBL Art.18). The fragile situation is underlined by the lack of a democratic system (or a relatively weaker one given their level of civil liberties), leaving little institutional guarantees against such actions. To take a more recent example, Hong Kong had been widely regarded as a city with a strong tradition of human rights protection. However, the situation rapidly deteriorated in a matter of months following the protest against the extradition bill in 2019 with widespread police brutality and gross infringement of basic human rights previously (thought to be) well-entrenched. In particular, the National People's Congress in China is imposing a national security legislation on Hong Kong to outlaw seditious activities and external interference from foreign countries. Under Article 18 of the Basic Law, national laws can only be applied in Hong Kong if they are listed in Annex III and relate to

defense, foreign affairs and "other matters outside the limits". The national laws would then be promulgated by taking effect automatically without local legislation. Examples like these demonstrate the fragility of human rights protection under a non-democratic system despite the apparent tradition of the rule of law.

Acknowledgement

The first author would like to acknowledge the support of the Strategic Research Fund (SRF), Department of Social Sciences, Education University of Hong Kong (Project Code: 02178).

Appendix

Constitutional Documents

Act of Constitution of Tonga
Act of Constitution of Tonga (Amendment) Act 2010
Constitution of the Principality December 17th, 1962 (as amended by Law n1.249 of April 2nd, 2002)
Constitution of the Republic of Singapore (in force from 1/4/2017)
Constitution of the Republic of Singapore (Amendment) Act 2016 (Act No.28 of 2016)
Explanations on "The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)" and Its Related Document (March 28, 1990)
Hong Kong Basic Law

Statutes, Bills, Acts, Conventions

Hong Kong Bills of Rights Ordinance (Cap. 383)
International Convention on Civil and Political Rights
International Convention on Economic, Social and Cultural Rights
Loi n. 771 du 25/07/1964 sur l'organisation et le fonctionnement du Conseil National
The Compulsory Education Act (Cap 51)
Universal Declaration of Human Rights

Case Laws

CODICES MON-2016-2-001
Fusitu'a v Minister of Public Enterprises [2016] TOSC 9
Leung Kwok Hung v Commissioner of Correctional Services [2017] 1 HKLRD 1041
Ministries in Fa'oliu v PSC [2017] TOSC 32
Mohammad Faizal v PP [2012] 4 SLR 0947),
T v Commissioner of Police [2013] 4 HKLRD 384
Thomas Pedras v the Prime Minister of Tonga [2014] TOCA 24

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