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RULE OF LAW WITH ASIAN CHARACTERISTICS: CULTURAL INSIGHTS FROM THE OCCUPY CENTRAL MOVEMENT IN HONG KONG

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Abstract

This article uses the Occupy Central social movement in Hong Kong as a natural experiment to consider whether Asian culture influences the understanding and exercise of fundamental rights. In an earlier article, the author explored the relationship between Chinese culture and the rule of law as measured by the World Justice Project Rule of Law Index. This article relies on the earlier work, but expands the analysis to consider Asian culture while at the same time focusing specifically on the fundamental rights aspect of the rule of law index. This article shows a strong correlation between lower scores for Asian countries on Individualism, as measured by the Hofstede Dimensions of Culture, and scores on fundamental rights, protection for freedom of expression, and protection for freedom of association, as measured by the World Justice Project Index. This correlation is reflected by the Occupy Central movement. Although the movement was an exercise in fundamental rights, its purpose was to promote the rights of the community and the protests were carried out in a manner to reduce the impact on community rights. When the movement ended, the negative consequences for the community were a significant reason, and the leaders of the movement were ultimately prosecuted for inciting a public nuisance.

Keywords: rule of law, culture, fundamental rights, freedom of expression, freedom of association, occupy central

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I. INTRODUCTION

In the Fall of 2014, citizens of Hong Kong participated in mass protests about the selection process for Hong Kong's Chief Executive. These protests, known as "Occupy Central"¹ were in part to support

¹ Central is a designation for an area in the business district of Hong Kong. The social movement that predated the mass protests in Central was known as "Occupy Central with Love and Peace." See Kin-man Chan, "Occupying Hong Kong: How deliberation, referendum and civil disobedience play out in the Umbrella Movement", *Sur Journal*, vol. 12, no. 21, August 2015, p. available at: https://sur.conectas.org/wp-content/uploads/2015/07/Sur-21_Kin-man-Chan_en.pdf, accessed on 11 April 2019. Some accounts use the full name of the movement, some use an abbreviation (OCLP), some just refer to Occupy Central, and some refer to the Umbrella Movement. For this article, the terms Occupy Central or the movement will be used to refer to the protests by which several locations were occupied for an extended period. The title Occupy Central with Love and Peace or the abbreviation OCLP will be used for the organized

student protests and in reaction to police use of force against the students, but they were also a manifestation of public support for a larger social and political movement that had begun more than a year before. A large number of people, including many, perhaps mostly, students, continued the protest by occupying three areas in Hong Kong for 79 days. This was a remarkable, unprecedented, social and political event in Hong Kong. Protesters exercised their rights of expression and association under the Hong Kong Basic Law in a significant and dramatic way.

This movement, with such robust and significant expression of fundamental rights, presents a kind of natural experiment to consider the relationship between culture and the fundamental rights that are part of the rule of law. In prior work, the author has suggested Chinese culture limits the development of rule of law.² In particular, the collectivist orientation in Chinese culture was found to reflect “a cultural limitation on the protection of individual rights” such that countries with Chinese culture “are unlikely to ever provide the level of protection [for fundamental rights] afforded in individualistically oriented countries.”³ Occupy Central provided an historical event to evaluate the earlier finding. The analysis below will show that Occupy Central, while being an expression of fundamental rights of freedom of speech and association, also illustrates the limitation on those rights due to a collectivist cultural tendency.

This article will begin with a description of rule of law data in general, and the fundamental rights data and scores in particular, from the World Justice Project Rule of Law Index. In the second section, the article will use the work of the social psychologist Geert Hofstede to show the tendency of Asian culture to favor the community over the individual. That tendency will then be compared to the rule of law data for fundamental rights, and will show a correlation between a preference for the individual and protection of fundamental rights. In the third section, the article shows how the Occupy Central movement reflects the cultural values for protection of the community. It will show

social movement that pre-dated the actual protests.

² Jeffrey E. Thomas, “Rule of Law with Chinese Characteristics: An Empirical Cultural Perspective on China, Hong Kong and Singapore”, *Asia Pacific Law Review*, vol. 22, no. 1, 2014.

³ *Ibid.*, p. 140.

these values in the objectives of the movement, the procedures used during the movement, and the reasons for concluding the occupation and protests.

II. WORLD JUSTICE PROJECT RULE OF LAW INDEX

The World Justice Project is a non-profit organization that was founded in 2006. Its goal “is to advance the rule of law around the world.”⁴ In seeking to advance this goal, the World Justice Project developed an index to perform a quantitative assessment of a country’s adherence to rule of law.⁵ This assessment relies on data from a general population poll and a questionnaire administered to legal experts in each country.⁶ The 2019 index covers 126 countries and jurisdictions, with data collected through more than 120,000 household surveys and 3,800 expert surveys.⁷ The index seeks to measure the rule of law as it is practiced, not based on law “on the books,” and its surveys are comprehensive, multi-dimensional and oriented to the perspective of ordinary people.⁸

A country’s scores are built from 500 variables.⁹ General population survey respondents answer “127 perception-based questions and 213 experience based questions.”¹⁰ The expert survey respondents are “in-country professionals with expertise in civil and commercial law, criminal and constitutional law, labor law, and public health.”¹¹ Expert surveys include “close-ended perception questions and several hypothetical scenarios with highly detailed factual assumptions aimed at ensuring comparability across countries.”¹² After cleaning the data by excluding partial surveys, suspicious data, and outliers, survey responses are “mapped onto the 44 sub-factors” or “onto the intermediate categories

⁴ Mark David Agrast, Juan Carlos Botero, Joel Martinez, Alejandro Ponce & Christine S. Pratt, *The World Justice Project Rule of Law Index 2012–2013*, World Justice Project, available at: <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2012-2013-report>, accessed on 11 April 2019, p 1.

⁵ *Ibid.*, p. 2.

⁶ *Ibid.* p. 1.

⁷ World Justice Project, *Rule of Law Index 2019*, World Justice Project, available at: <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2019>, accessed on 16 March 2019, p. 5.

⁸ *Ibid.*, p. 8.

⁹ *Ibid.*, p. 161.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

that make up each sub-factor.”¹³ The responses are then “codified so that all values fall between 0 (weakest adherence to the rule of law) and 1 (strongest adherence to the rule of law), and aggregated at the country level using the simple (or unweighted) average of all respondents.”¹⁴

The World Justice Project developed its index based on four universal principles: accountability, just law, open government, and accessible and impartial dispute resolution.¹⁵ These four principles are measured by reference to eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice.¹⁶ These eight factors are broken down into 44 sub-factors.¹⁷ For example, factor 1, Constraints on Government Powers, has six sub-factors: government powers are effectively limited by the legislature, government powers are effectively limited by the judiciary, government powers are effectively limited by independent auditing and review, government officials are sanctioned for misconduct, government powers are subject to non-governmental checks, and transition of power is subject to the law.¹⁸

This article focuses on factor 4, fundamental rights. The Index includes fundamental rights because it recognizes “that the rule of law must be more than merely a system of rules – that indeed, a system of positive law that fails to respect core human rights established under international law is at best ‘rule *by* law’, and does not deserve to be called a rule of law system.”¹⁹ After much debate about the scope of the rights to be included in the index, the World Justice Project decided to “focus on a relatively modest menu of rights that are firmly established under international law and are most closely related to rule of law concerns.”²⁰ Factor 4, Fundamental Rights, has eight sub-factors: equal treatment & absence of discrimination, the right to life & security of the person, due process of law and rights of the accused, freedom of opinion and expression, freedom of belief & religion, freedom from arbitrary interference with privacy, freedom of assembly & association,

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*, p. 9.

¹⁶ *Ibid.*, p.10.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Mark David Agrast, Juan Carlos Botero, Joel Martinez, Alejandro Ponce & Christine S. Pratt, see note 5, p. 14.

²⁰ *Ibid.*

and fundamental labor rights.²¹

A. COMPARISONS OF FUNDAMENTAL RIGHTS

The average score for protection of fundamental rights in East Asia and the Pacific²² for 2019 was 0.56.²³ However, this figure includes both Australia (0.79) and New Zealand (0.80), which are culturally closer to the United Kingdom and Europe than to Asia. When those two countries are excluded, the average for East Asia and the Pacific drops to 0.52.²⁴ By comparison, the average score for Europe, the European Union Free Trade Association and North America (hereinafter shortened to “Europe-North America”)²⁵ for 2019 was 0.77,²⁶ which was 0.21 higher than East Asia and the Pacific. This is not surprising, as the Europe-North America region has a strong cultural commitment to both fundamental rights and rule of law. All of the top ten countries in the world for fundamental rights are in the Europe-North American region,²⁷ as are nine out of the top ten countries for rule of law overall

²¹ World Justice Project, see note 8, p. 10.

²² East Asia and the Pacific is the regional designation used by the Index that includes Hong Kong, Indonesia and China. The list of countries included is: Australia, Cambodia, China, Hong Kong, Indonesia, Japan, Malaysia, Mongolia, Myanmar, New Zealand, Philippines, Singapore, South Korea, Thailand, and Vietnam. *Ibid.*, p. 18.

²³ This average was calculated from the 2019 fundamental rights scores for the countries included in the East Asia and Pacific region. *Ibid.*, p. 25. *The average was 0.558667, but was rounded up to 0.56.*

²⁴ This average used the same 2019 data as was used in note 23, except that Australia and New Zealand were omitted. The calculation came to 0.522308, but was rounded down to 0.52.

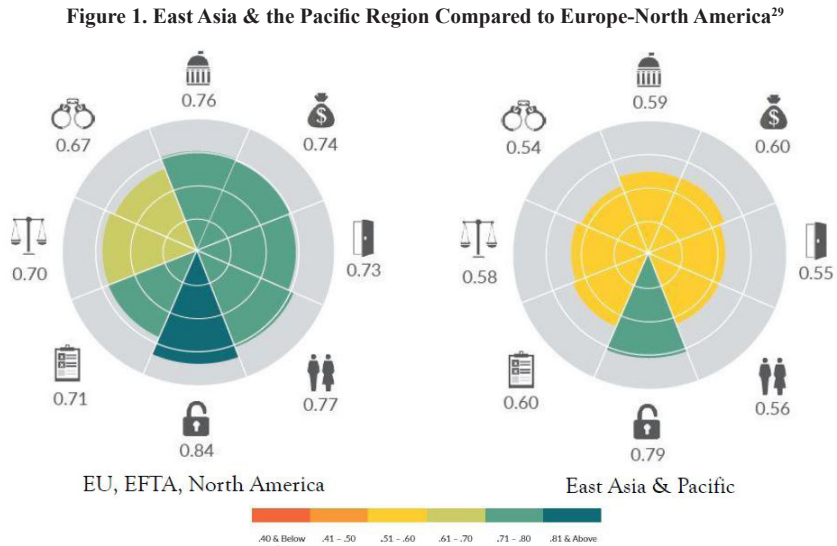
²⁵ The European Union, European Free Trade Association, and North America is a regional designation used by the Index that includes Western Europe, the United Kingdom, and the United States. The list of countries included in this regional designation is as follows: Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, United Kingdom, and United States. *Ibid.*, p. 19.

²⁶ This average was calculated from the 2019 fundamental rights scores for the countries included in the European Union, the European Free Trade Association, and North America region. *Ibid.*, p. 25. *The average was 0.774167, but was rounded down to 0.77. If Australia and New Zealand were included with the other countries in this region, which would be more culturally appropriate than including them in East Asia and the Pacific, the average score would rise to 0.775385, which, with rounding, would be 0.78.*

²⁷ *Ibid.*, p. 25. *The top ten, in order, for Fundamental Rights were: Finland (0.92),*

(with the one exception being New Zealand, which is culturally close to Europe-North America).²⁸

The graphics below show the two regions' average scores for all eight factors based on data collected for the 2017 index:



These graphics show that Europe-North America has significantly higher average scores than East Asia and the Pacific on all eight rule of law factors, and that the largest difference is on factor 4, fundamental rights.

Another way to see the differences between the Europe-North

Denmark (0.92), Norway (0.90), Sweden (0.86), Austria (0.85), Germany (0.85), Belgium (0.84), Netherlands (0.84), Canada (0.83), Estonia (0.83) and United Kingdom (0.82). The United States ranked 27th on this factor. The highest ranked country in the East Asia and Pacific region was New Zealand (0.80), ranked 12th, and the highest ranked culturally Asian country was Japan (0.78), ranked 17th.

²⁸ *Ibid.*, p. 16. *The top ten ranked countries, in order, were: Denmark (0.90), Norway (0.89), Finland (0.87), Sweden (0.85), Netherlands (0.84), Germany (0.84), Austria (0.82), New Zealand (0.82), Canada (0.81), and Estonia (0.81). The highest ranked culturally Asian country was Singapore (0.80).*

²⁹ World Justice Project, *Rule of Law Index 2017-2018*, available at: <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2017%E2%80%932018>, accessed on 12 April 2019, p. 18-19. These graphics were not generated for the 2019 Index.

America countries and East Asia and the Pacific is to look at individual countries' scores and rankings on fundamental rights. The table below shows countries in the two regions side-by-side by fundamental rights score and rank from the 2019 Index:

Table 1. Fundamental Rights Scores and Rankings Compared: Europe-North America to East Asia and the Pacific³⁰

Country	Score	Global Factor Rank	Country	Score	Global Factor Rank
Finland	0.92	1	Hungary	0.58	56
Denmark	0.9	2	Greece	0.66	36
Norway	0.92	3	Poland	0.66	38
Sweden	0.86	4	Croatia	0.65	39
Austria	0.84	5	New Zealand	0.8	12
Germany	0.85	6	Australia	0.79	13
Belgium	0.84	7	Japan	0.78	17
Netherlands	0.84	8	South Korea	0.74	22
Canada	0.83	9	Singapore	0.69	30
Estonia	0.83	10	Hong Kong	0.66	33
United Kingdom	0.82	11	Mongolia	0.58	57
Portugal	0.79	14	Indonesia	0.52	82
Czech Republic	0.78	15	Malaysia	0.48	90
Spain	0.78	16	Thailand	0.48	89
France	0.74	20	Vietnam	0.46	97
Slovenia	0.73	23	Philippines	0.42	105
Italy	0.73	25	Cambodia	0.35	117
United States	0.72	27	China	0.32	121
Romania	0.7	29	Myanmar	0.31	123
Bulgaria	0.6	51			

This table shows that the Europe-North American region has much stronger scores on protection of fundamental rights. The lowest country in that region is Hungary (a former member of the Soviet bloc), with a score of 0.58 and a rank of 56th. Nine out of the fifteen countries in the East Asia and the Pacific region scored below Hungary on protection of fundamental rights, and three out of the fifteen (Cambodia, China,

³⁰ World Justice Project, see note 8, at p. 25.

and Myanmar) score in the bottom 10% on protection of fundamental rights for the 126 countries included in the index. Japan, which is the highest scoring country on the factor with Asian culture, scored at about the mid-point of the Europe-North America region, tied with the Czech Republic and Spain.

B. FREEDOM OF EXPRESSION AND FREEDOM OF ASSOCIATION IN EAST ASIA AND THE PACIFIC

A country's score for fundamental rights is an average of its scores for the eight sub-factors. The two sub-factors most relevant to the analysis of this article are sub-factors 4.4, freedom of opinion and expression (hereafter shortened to "freedom of expression"), and 4.7 freedom of assembly and association (hereafter shortened to "freedom of association").³¹ These two factors were directly involved in the Occupy Central as the protestors were exercising both freedom of expression and freedom of association. The chart below provides the country scores and global ranking for these two sub-factors for all of the countries in the East Asia and the Pacific region, except Australia and New Zealand, which were excluded as being significantly different in their culture.

³¹ *Ibid.*, p. 12. The other six factors not included in this analysis are equal treatment & absence of discrimination, the right to life & security of the person, due process of law and rights of the accused, freedom of belief & religion, freedom from arbitrary interference with privacy, and fundamental labor rights.

Table 2. Freedom of Expression and Freedom of Association Scores for East Asia and the Pacific (excepting Australia and New Zealand)³²

Country	Funda- mental Rights Rights	Global Rights Rank	Freedom of Expres- sion	Expres- sion Rank	Freedom of Asso- ciation	Asso- ciation Rank
Japan	0.78	17	0.72	23	0.73	35
South Korea	0.74	22	0.65	40	0.69	45
Singapore	0.69	30	0.50	85	0.49	98
Hong Kong	0.66	33	0.57	70	0.62	69
Mongolia	0.58	57	0.63	47	0.68	47
Indonesia	0.52	82	0.67	37	0.66	54
Malaysia	0.48	90	0.46	93	0.44	104
Thailand	0.48	89	0.52	82	0.46	103
Vietnam	0.46	97	0.40	105	0.37	114
Philippines	0.42	105	0.56	73	0.57	84
Cambodia	0.35	117	0.31	116	0.41	108
China	0.32	121	0.12	125	0.17	125
Myanmar	0.31	123	0.40	107	0.35	115
Average	0.52		0.50		0.51	

This table shows that, in general, the sub-factor scores for freedom of expression and freedom of association are lower than the scores for the fundamental rights factor. The average fundamental rights score for this group was 0.52 compared to an average score of 0.50 for freedom of expression and 0.51 for freedom of association. Japan, which has the highest score and ranking in this group for fundamental rights (0.78, global rank 17), has a lower scores for freedom of expression (0.72, global rank 23) and freedom of association (0.73, global rank 35).

³² This table was generated from data included in the Rule of Law Index 2019. The author obtained the data in a spreadsheet from the World Justice Project website. See World Justice Project, “Current and Historical Data”, available at: <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/current-historical-data>, accessed on 12 March 2019. The reader can verify scores for individual countries by going to the country reports in the Index. See, for example, “Japan Country Report”, World Justice Project Rule, see note 8, p. 91. The Index did not include global rankings on sub-factors. Those were calculated by putting sub-factor scores in rank-order. As has been the custom with the Index, the scores and averages were rounded to two decimal places.

Singapore is perhaps the most dramatically different country, with a freedom of expression score of 0.50, which is a global rank of 85. This is much lower than its overall fundamental rights score of 0.69, and its rank of 30th. Singapore's score for freedom of association is 0.49, which is 0.01 lower than its expression score, leading to a global rank of 98.

Myanmar, Mongolia, Indonesia, and the Philippines are interesting exceptions where their scores and rankings for freedom of expression and freedom of association are significantly higher than their overall scores for fundamental rights. Myanmar's score for fundamental rights was 0.31 (global rank 123, last), while its score for freedom of expression was 0.40 (global rank 107), and its score for freedom of association was 0.35 (global rank 115). Mongolia's fundamental rights score was 0.58, (global rank 57), but its freedom of expression score was 0.63 (global rank 47) and its freedom of association score was 0.68 (global rank 47). Indonesia's score for freedom of expression was 0.67 (global rank of 37) and for freedom of association was 0.66 (global rank 54) compared to its overall fundamental rights score of 0.52 (global rank 82). The Philippines had a score of 0.42 (global rank 105) for fundamental rights, but improved to 0.56 (global rank 73) for freedom of expression and to 0.57 (global rank 84).

Notwithstanding these exceptions, the scores for the freedom of expression and freedom of association sub-factors are significantly lower in East Asia and the Pacific compared to Europe-North America. The average of the scores for freedom of expression in Europe-North America is 0.76, and the average for freedom of association is 0.80, compared to averages of 0.50 and 0.51 for East Asia and the Pacific.³³ Mongolia (0.63/0.68), Indonesia (0.67/0.66), and the Philippines (0.56/0.57), the three countries that scored higher on the sub-factors than on the general fundamental rights factor, were all still lower than the averages of 0.76 and 0.80 in Europe-North America. The lowest scores for these two sub-factors in the Europe-North America group was for Hungary, 0.48 on both sub-factors.³⁴ Although this is below the average for East Asia and the Pacific, it is higher than five out of

³³ The average scores for Europe-North America were calculated by the author based on the scores reported in the 2019 Index. The scores for East Asia and the Pacific were calculated for table 2 using the same data, but scores from Australia and New Zealand were excluded from the calculations because they are not culturally Asian. See *note 33*.

³⁴ World Justice Project, see note 8, p. 85 (Hungary's country report).

the thirteen countries in East-Asian and the Pacific for freedom of expression, and is higher than six countries in that region for freedom of association.³⁵ We now turn to a possible cultural explanation for these differences.

III. ASIAN CULTURE REGARDING THE INDIVIDUAL

Although there are many ways one might try to measure culture, for the purposes of this article, we turn to the work of Geert Hofstede, a social psychologist who identified several dimensions of national culture while working on transnational management issues with IBM.³⁶ Based on data collected from more than 116,000 questionnaires from IBM employees and business school students from 72 countries,³⁷ Hofstede identified four dimensions of national cultures: power distance, uncertainty avoidance, individualism, and masculinity.³⁸ Subsequent work done in collaboration with Michael Harris Bond in exploring Asian cultures and seeking to avoid Western bias resulted in the development of a fifth dimension, originally labeled long-term orientation³⁹ which is now called pragmatism.⁴⁰ These dimensions of culture have been validated, and the measures and outcomes have been replicated.⁴¹

This article focuses on the factor known as individualism because it may have some explanatory power for the tendency for Asian countries to have lower scores on fundamental rights.⁴² A national culture's

³⁵ For freedom of expression, Hungary scored 0.48, which was higher than Malaysia (0.46), Myanmar (0.40), Vietnam (0.40), Cambodia (0.31), and China (0.12). For freedom of association, Hungary also scored 0.48, which was higher than Thailand (0.46), Malaysia (0.44), Cambodia (0.41), Vietnam (0.37), Myanmar (0.35), and China (0.17). See Table 2.

³⁶ See generally Geert Hofstede, *Culture's Consequences: International Differences in Work-Related Values*, Sage, 1980. After more than two decades of subsequent work and validation, the second edition was published in 2001. See Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations*, second edition, Sage, 2001. All subsequent citations will be to the second edition.

³⁷ Geert Hofstede, *Culture's Consequences: Comparing Values*, see note 33, p. 41.

³⁸ *Ibid.* p. 58.

³⁹ *Ibid.* p. 69–71.

⁴⁰ See Geert Hofstede, "The 6-D model of national culture", available at: <https://geerthofstede.com/culture-geert-hofstede-ger-jan-hofstede/6d-model-of-national-culture/>, accessed on 23 March 2019.

⁴¹ Geert Hofstede, see note 37, pp. 65–68.

⁴² The other dimensions of national culture are Power Distance Index, Masculinity, Uncertainty Avoidance, and Pragmatism. Power Distance Index is a measure of at-

preference for individualism is evaluated in comparison to that country's preference towards collectivity. The individualism dimension "describes the relationship between the individual and the collectivity that prevails in a given society."⁴³ A high score on this dimension suggests a greater feeling of individual independence. "It means that individual choices and decisions are expected."⁴⁴ On the other hand, a low score "means that one 'know one's place' in life, which is determined socially. With a metaphor from physics, people in an individualist society are more like atoms flying around in a gas while those in collectivist societies are more like atoms fixed in a crystal."⁴⁵ Countries with a higher individualism score, who therefore place a higher value on the individual compared to groups, seem more likely to have greater protection for fundamental rights of individuals.

As might be expected, Asian countries tend to have a lower score on the individuality dimension than countries in Europe and North America. Table 3, below, provides the individualism scores for countries in the Europe-North America and East Asia and the Pacific groups.⁴⁶ Because Australia and New Zealand are reported separately, under the heading of Oceania, they are shown as a separate geographic grouping in this table. The high scores in Australia and New Zealand for individualism show their cultural similarity to Europe and North American rather than the other countries in East Asia and the Pacific.

itudes towards inequality. Geert Hofstede, see note 37, p. 79. Masculinity is a measure of preferences for male-oriented ego goals such as careers and money. *Ibid.* p. at 279. *Uncertainty Avoidance* is a measure of society's preference to deal with uncertainty "through the domains of technology, law, and religion." *Ibid.* p. 145. *Pragmatism* is the measure of characteristics associated with Chinese culture, such as persistence, ordering relationships by status and observing that order, thrift, and a sense of shame on the long-term side, and, on the short-term side, values of personal steadiness and stability, protecting one's 'face,' respect for tradition, and reciprocation of greetings, gifts and favors. *Ibid.* pp. 352-353. These dimensions may well be correlated with certain tendencies for Asian countries regarding rule of law, but because this article is focused on the Occupy Central movement, it has focused on the individualism dimension in that the movement exercised freedom of expression and freedom of association.

⁴³ *Ibid.* p. 209.

⁴⁴ Geert Hofstede, see note 41.

⁴⁵ *Ibid.*

⁴⁶ These scores were obtained from geerthofstede.com and are the data used in the 2015 version of his books. "Dimension data matrix", available at: <https://geerthofstede.com/research-and-vsm/dimension-data-matrix/>, accessed on 23 March 2019. Scores were not available for Cambodia, Mongolia, or Myanmar.

Table 3. Individualism Scores for countries in the Europe-North America and East Asia and the Pacific Groups

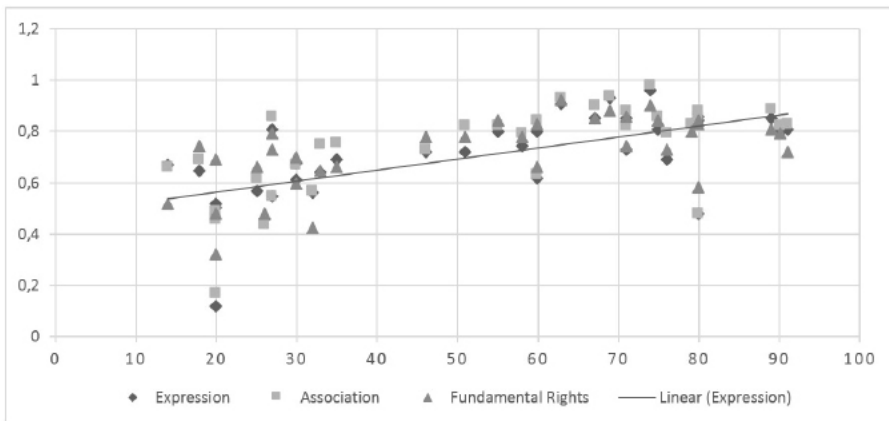
Europe-North Am.		Oceania		E. Asia & Pacific	
Country	IDV	Country	IDV	Country	IDV
US	91	Australia	90	Japan	46
UK	89	New Zealand	79	Philippines	32
Netherlands	80			Malaysia	26
Canada	80			Hong Kong	25
Hungary	80			Singapore	20
Italy	76			Thailand	20
Belgium	75			China	20
Denmark	74			South Korea	18
Sweden	71			Indonesia	14
France	71			Cambodia	NA
Norway	69			Mongolia	NA
Germany	67			Myanmar	NA
Finland	63				
Estonia	60				
Poland	60				
Czech Repub.	58				
Austria	55				
Spain	51				
Greece	35				
Croatia	33				
Romania	30				
Bulgaria	30				
Portugal	27				
Slovenia	27				

Although a few countries at the bottom of the Europe-North America group have scores comparable to the East Asia and the Pacific countries, the great majority of Europe-North America countries have much higher individualism scores. The average score for Europe-North America is 60.5, compared to an average of 24.56 for East Asia and the Pacific. The highest score for an East Asia country is 46 for Japan, which is well

below the average for Europe-North America.

As can be seen in Figure 2, below, and Appendix 1, the individualism scores are strongly correlated to fundamental rights and the sub-factors of freedom of expression and freedom of association. When the data are compared for the full set of countries in the two groups, the correlation between individualism and fundamental rights is 0.6134.⁴⁷ The correlation is slightly stronger for the two subfactors: 0.6399 for freedom of expression and 0.6408 for freedom of association.⁴⁸ These correlations are statistically significant to a 99% level.⁴⁹ These correlations support the theory that the cultural value for individualism is part of the explanation for higher scores in protection of fundamental rights, freedom of expression, and freedom of association in the combined groups.

Figure 2. Individualism Correlated with Fundamental Rights, Freedom of Expression, and Freedom of Association



While difference in the cultural value of individualism helps to explain the scores in the group as a whole, the correlations are much weaker when the groups are separated. The correlations within the Europe-North American group are only 0.3772 for fundamental rights, 0.4534

⁴⁷ See Appendix 1.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

for freedom of expression, and 0.3929 for freedom of Association.⁵⁰ These correlations are significant to a 90% level for fundamental rights and freedom of association, and to a 95% level for freedom of expression.⁵¹ For the East Asia and the Pacific, the correlations are even weaker (though because of the small number of countries for which we have data, the correlations for East Asia and the Pacific are not statistically significant). For fundamental rights, the correlation with individualism is 0.3017. For freedom of expression the correlation is 0.2973, and for freedom of association it is 0.3203.⁵² This suggests that while Asian cultural values may explain some of the difference between the groups, it explains much less of the difference within the groups. In other words, within the groups something other than the cultural commitment to individualism accounts for differences in the scores for fundamental rights, freedom of expression, and freedom of association.

Specific examples within the groups show that some countries with low individualism scores may nevertheless have relatively high scores for fundamental rights and the related sub-factors. The most dramatic example of this is Indonesia, which has an individualism score of 14, the lowest score of all the countries compared. Notwithstanding this very weak cultural commitment to individuals, Indonesia's score for fundamental rights of 0.52 was about at the average for East Asia and the Pacific group, but, remarkably, Indonesia's scores for freedom of expression and freedom of association were 0.67, and 0.66, fairly close to the scores of Japan (0.72 and 0.73), which were the highest in the group.⁵³ In the Europe-North America group, Portugal has an individualism score of 27, which is close to the average of the East Asia and the Pacific group, yet it scored 0.79 in fundamental rights, 0.81 in freedom of expression, and 0.86 in freedom of association.⁵⁴

Even though some countries are exceptional because, notwithstanding lower individualism scores, they have higher than expected scores on fundamental rights, freedom of expression, and freedom of association, these data suggest that there may be an upper bound for protection of those rights for Asian countries. Japan has the highest score for individualism of countries in the East Asia and the Pacific group (excepting Australia and New Zealand on cultural

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

grounds), a 46, but its scores for fundamental rights (0.78), freedom of expression (0.72) and freedom of association (0.73)⁵⁵ are still below the averages for Europe-North America(0.80/0.78/0.80).⁵⁶ Portugal is the country from the Europe-North America group that has one of the lowest individualism scores, a 27, yet still has robust protection for fundamental rights (0.79), freedom of expression (0.81), and freedom of association (0.86).⁵⁷ However, while a 27 for individualism is exceptionally low for Europe-North America, it is still above average for East Asia and the Pacific. The examples of Japan and Portugal suggest that as countries in East Asia and the Pacific progress in rule of law, they can improve in the protection of fundamental rights, but it seems unlikely that they will surpass the protections provided by Japan, which is below the average of countries in Europe-North America. In other words, because of the weak cultural commitment to individualism, it seems unlikely the countries in East Asia and the Pacific will reach the level of protection of fundamental rights seen in Europe and North America. Japan's score for fundamental rights, a respectable 0.78, seems likely to be about as high as a country will achieve in the East Asia and the Pacific group.

IV. OCCUPY CENTRAL AS A REFLECTION OF CULTURAL COMMITMENT TO THE COMMUNITY

The Occupy Central movement provides an historic narrative that provides another way to evaluate this theory regarding the interaction of law and culture. The protesters exercised their fundamental rights of expression and association, which is what one would expect in a jurisdiction protecting the rule of law (as defined by the World Justice Project). But was there also evidence of the suggested limitation on protection of fundamental rights because of Asian culture's weaker commitment to individualism? Does the historical narrative of Occupy Central support the theory that Asian culture bounds the protection of individual rights to some point below the level of protection afforded in Europe and North America? This section of the article answers those questions.

⁵⁵ *Ibid.*

⁵⁶ See *Table 1*.

⁵⁷ See *Appendix 1*.

A. THE OCCUPY CENTRAL STORY

Although the formal protests of the Occupy Central movement began in September of 2014,⁵⁸ the work of the movement began more than a year before. Occupy Central with Love and Peace was started in an effort to mend a schism that developed within the pro-democracy supporters in 2012. The Democratic Party in 2012 participated in secret negotiations with Chinese officials about the reform of Hong Kong's Legislative Council. Some pro-democracy groups wanted to eliminate the "functional seats" of the council that were not elected, but were appointed to represent various constituencies. In the secret negotiations, the Democratic Party conceded an ongoing role for the functional seats in the council. This upset others seeking to promote democracy.⁵⁹ To mend the schism, OCLP proposed to organize broad-based, civil-society discussions about reforms followed by a non-governmental referendum.⁶⁰

Occupy Central with Love and Peace organized three waves of discussion days in 2013 and 2014. The first discussion took place at University of Hong Kong and was attended by approximately 700 people from both moderate and more radical pro-democracy groups. The participants engaged in a rational discussion of concerns about proposed nominating committee to be used to select candidates for Chief Executive of Hong Kong.⁶¹ This initial discussion was followed by additional discussions with different community groups (e.g. university students, social workers, laborers, women, church groups, and the chronically ill) between October 2013, and January 2014. These

⁵⁸ Kin-man Chan, see note 2. Additional sources include: "Occupy Central is on: Benny Tai rides wave of student protest to launch movement", South China Morning Post, 27 September 2014, available at: <https://www.scmp.com/news/hong-kong/article/1601625/hong-kong-students-beat-us-it-benny-tai-declares-start-occupy-central>, accessed on 12 April 2019; "Thousands of Protestors Take to Streets for Second Night of Pro-Democracy Demonstrations", South China Morning Post, 29 September 2014, available at: <https://www.scmp.com/news/hong-kong/article/1603817/riot-police-withdrawn-defiant-protesters-dig-second-day-occupy>, accessed on 12 April 2019; Chris Buckley and Alan Wong, "Crackdown on Protests by Hong Kong Police Draws More to the Streets", New York Times, 29 September 2014, available at: <https://www.nytimes.com/2014/09/29/world/asia/clashes-in-hong-kong.html>, accessed on 12 April 2019.

⁵⁹ Kin-man Chan, see note 2, pp. 1-2.

⁶⁰ *Ibid.*, p. 2.

⁶¹ *Ibid.*, p. 2.

discussions involved about 3000 participants.⁶² The third discussion day was held at five different locations simultaneously on May 4, 2014, in which some 2500 citizens deliberated on 15 proposed reform proposals.⁶³ At the end of the day, participants selected three proposals to be included in the referendum.⁶⁴

Even though the electronic voting system used for the referendum was subject to unprecedented attacks by hackers, ultimately, approximately 800,000 Hong Kong residents voted in the non-governmental referendum. The proposal for the three-track system (civil, political party, or legislative council nomination) advanced by Alliance for True Democracy received the most votes.⁶⁵ In addition, 88% of votes agreed that the Legislative Council “should veto any government proposal that did not meet international standards of universal suffrage.”⁶⁶

The referendum did not influence the Chinese government. A decision from the Standing Committee of the National People’s Congress on August 31, 2014, adopted a nominating process consistent with current practice. Candidates for the Chief Executive of Hong Kong would be required to receive support from 50% of the nominating committee made up of 1,200 representatives from four sectors of society, and the number of candidates was to be restricted to no more than two or three.⁶⁷ In response to this decision, Occupy Central with Love and Peace intended to launch protests on October 1, China’s National Day.⁶⁸ However, students were impatient so started an occupation of Civic Square on September 26.⁶⁹ Shortly thereafter, some 50,000 people gathered outside the square in support of the students.⁷⁰ In the early morning hours of September 28, Occupy Central with Love and Peace announced that the planned protests would begin immediately.⁷¹

⁶² *Ibid.*, p. 2.

⁶³ *Ibid.*, p. 3.

⁶⁴ *Ibid.*, p. 3.

⁶⁵ *Ibid.*, pp. 3-4.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, p. 4.

⁶⁸ *Ibid.*

⁶⁹ “Occupy Central won’t start early, says Benny Tai, after student clashes with police leave dozens injured”, South China Morning Post, 26 September 2014, available at: <https://www.scmp.com/news/hong-kong/article/1601262/chaotic-scenes-students-break-civic-square-class-boycott-ends>, accessed on 12 April 2019.

⁷⁰ Kin-man Chan, *see note 2*, p. 5.

⁷¹ *Ibid.*

Police reacted to the protests with tear gas on Sunday, September 28.⁷² Those who were occupying the area used umbrellas to protect themselves, resulting in the umbrella becoming a symbol of the movement.⁷³ Images and reports of the police attacks against the protestors were shared on social media, television, and in the press, resulting in many people in Hong Kong rallying to the cause.⁷⁴

Over the next two and one half months, the occupation of three areas in Hong Kong continued. During this time, protestors tried to open negotiations with government officials. Shortly after the protests began, a deputy to the Hong Kong Chief Executive met with students.⁷⁵ Further meetings with the government, however, were called off by the students after clashes between students and pro-government supporters.⁷⁶ About two weeks later student leaders and government officials debated on live television.⁷⁷ In November, student leaders tried to travel to Beijing to confront Chinese leaders, but they were prevented from boarding the flight.⁷⁸

The beginning of the end of the occupation was triggered by a court order in mid-November refusing to hear the protesters' appeal and refusing to stay the injunction against the occupation. With the appellate relief denied, the police were authorized to enforce the injunction and to begin clearing the occupation.⁷⁹ The police cleared some of the site, but

⁷² Chris Buckley and Alan Wong, see note 59.

⁷³ Kin-man Chan, see note 2, p. 5.

⁷⁴ Chris Buckley and Alan Wong, see note 59.

⁷⁵ Austin Ramzy and Keith Bradsher, "Hong Kong Leader Refuses to Resign, but Deputy to Meet with Protesters", *New York Times*, 2 October 2014, available at: <https://www.nytimes.com/2014/10/03/world/asia/hong-kong-protests.html>, accessed on 12 April 2019.

⁷⁶ "After angry mods turn on protesters, students call off talks", *South China Morning Post*, 4 October 2014, available at: <https://www.scmp.com/news/hong-kong/article/1609166/after-angry-mobs-turn-protesters-students-call-talks>, accessed on 12 April 2019.

⁷⁷ "Who's who at Hong Kong's students vs government debate", *South China Morning Post*, 21 October 2014, available at: <https://www.scmp.com/news/hong-kong/article/1621237/who-who-tuesdays-dialogue-between-hong-kong-government-and-students>, accessed on 12 April 2019.

⁷⁸ Joyce Ng, Amy Nip, & Stuart Lau, "Beijing bans student leaders from taking trip to mainland to press for democracy", *South China Morning Post*, 15 November 2014.

⁷⁹ Julie Chu and Bryan Harris, "Appeal court clear way for bailiffs to end Occupy protest in Mong Kok", *South China Morning Post*, 16 November 2014, available at: <https://www.scmp.com/news/hong-kong/article/1640976/appeal-court-denies-hear->

protestors tried to reclaim the site. A second order a few days later was also enforced.⁸⁰ On December 3, 2014, the leaders of Occupy Central with Peace and Love call on the students to retreat from the protest sites, and, along with 60 protestors, the leaders turn themselves in to the Hong Kong Police. By December 15, 2014, the last of the protest sites was cleared.⁸¹

B. ASIAN VALUES IN THE OCCUPY CENTRAL STORY

A closer look at the historical narrative of Occupy Central will show the Asian values of the activists in Hong Kong. The “universal suffrage” that was sought was more about the community’s right to elect people to represent it than about the individual’s right to vote. When protestors undertook the occupation of public spaces, they did so in a way that sought to reduce the impact on the community. When the occupation ended, it did so in large part out of concern for the community, reflecting a concern about the consequences of exercising the freedoms of expression and association.

1. Occupy Central’s Objective was to Promote Community Interests

The Occupy Central protestors were exercising their rights of expression and association to advance the interests of the community as a whole. The movement was a response to the Chinese government’s interpretation of the requirements of the hand-over agreement that Hong Kong move towards universal suffrage in the selection of the Chief Executive of Hong Kong.⁸² The Basic Law of Hong Kong provides in Article 45: “The ultimate aim [of the method for selection]

ing-clearing-way-end-occupy-central-protests, accessed on 12 April 2019.

⁸⁰ Julie Chu, “High Court judge’s refusal to stall injunction gives green light for Admiralty clearance”, South China Morning Post, 5 December 2014, available at: <https://www.scmp.com/news/hong-kong/article/1656244/high-court-set-rule-occupy-protesters-bid-stall-admiralty-clearance>, accessed on 12 April 2019.

⁸¹ Kin-man Chan, see note 2, p. 6.

⁸² The idea for the Occupy Central movement can be traced to a column by Benny Tai Yiu-ting in the Hong Kong Economic Journal suggesting “10,000 people to block road in the financial heart of the city should the central and local governments create a system for the 2017 chief executive election that did not allow a ‘genuine’ choice of candidates.” Cary Cheung & Jeffie Lam, “Original Hong Kong Occupy Plan veered off script”, South China Morning Post, 3 December 2014, available at: <https://www.scmp.com/news/hong-kong/article/1654286/original-hong-kong-occupy-plan-veered-script>, accessed 29 March 2019.

is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”⁸³ Although the press framed the Occupy Central movement about the right of universal suffrage, in fact the dispute was about the nomination procedures. The Chinese Government, in Standing Committee’s August 31 decision, outlined a nomination procedure that was consistent with current practice in Hong Kong. A candidate for Chief Executive would be nominated if he or she were to receive at least 50% endorsement from a 1200 member nominating committee representing four sectors of society.⁸⁴ The pro-democracy advocates were concerned that this method gave the Chinese government too much influence over the nomination process. Many of the nominating committee would be appointed by the government, and those members would work to prevent the nomination of any candidate disfavored by the Chinese government.⁸⁵

The discussion process organized by Occupy Central with Love and Peace generated proposals that would open the nomination process to a broader array of candidates. The three proposals voted on by the civic referendum were:

- 1) Proposal of the Alliance for True Democracy: Nomination of candidates for Chief Executive through one of three possible channels: a. civil nomination (endorsement by 1% of registered votes), b. political party nomination (the political party must have received at least 5% of the valid votes in the prior Legislative Council elections), or c. nomination by the Legislative Council nominating committee.⁸⁶
- 2) People Power proposal: nomination by a nominating committee composed of all popularly elected district councilors and legislative councilors who would nominate candidates who had the endorsement of 1% of registered votes in a geographical constituency, the endorsement of 5% of legislative councilors, or the endorsement of

⁸³ Hong Kong Basic Law Art. 45.

⁸⁴ See *note 68*.

⁸⁵ “Hong Kong: Occupy Central anger over Beijing ruling”, BBC News, 31 August 2014, available at: <https://www.bbc.com/news/world-asia-china-29004025>, accessed on 12 April 2019.

⁸⁶ Proposals, PopVote, 6.20-29 Civil Referendum Proposals, available at: https://popvote.hk/english/project/vote_622/proposal/, accessed in 12 April 2019/

5% of district councilors.⁸⁷

- 3) Students' Proposal (from Hong Kong Federation of Students and Scholarism): nomination by a nominating committee comprised of all popularly elected legislative councilors who would nominate candidates who received endorsement from 1% of voters or endorsement or 8% of the nominating committee.⁸⁸

Because of disputes about the inclusion of public nomination in all three proposals, Occupy Central with Love and Peace "added an additional motion to the referendum to encourage those who did not support public nomination to take part [in the referendum]: 'The Legislative Council should veto any proposed election method violating international standards of universal suffrage that fails to provide voters genuine choice.'⁸⁹

The first proposal, by the Alliance for True Democracy, received the largest number of votes, showing that what most people wanted was a nominating system that would provide more open pathways to nomination for the office of Chief Executive. While one could perhaps construe this expression of public opinion as an endorsement of an individual's right to run for Chief Executive, the historical narrative shows that the concern was about community choice, and about reducing interference and manipulation by the Chinese government. The additional motion added to the referendum also reflects a community orientation. While the motion references the "international standards of universal suffrage," the point of the motion is to allow voters "genuine choice" between candidates. This motion received a favorable vote from 88% of those who participated in the referendum,⁹⁰ showing a strong community endorsement of the universal suffrage to give the community a choice in the selection of the Chief Executive.

b. Occupy Central Protesters Sought to Reduce Impact to the Community

While the protesters were exercising their rights to free expression and association, an Asian orientation was reflected by steps protestors

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Kin-man Chan, see note 2, p. 3.

⁹⁰ *Ibid.*, p. 4.

took to reduce the impact on the community. Admittedly, the occupation caused traffic problems. The authorities, sharing the same sense of community as the protestors, hoped that these traffic problems would cause the protestors to withdraw from their protests.⁹¹ Although the protestors did not withdraw to solve the traffic problems, they took steps to reduce the harmful consequences of the occupation. For example, a few days into the occupation, the protestors made way for civil service workers to return to their offices.⁹² Similarly, some protestors volunteered to direct pedestrian traffic to make movement in the occupied areas more efficient.⁹³ The protestors also organized a system to recycling and trash collection system to minimize the impact of protestor waste.⁹⁴

While these efforts also improved the occupation experience for protestors, they show that the protestors were concerned about the comfort of others. In addition, the protestors' efforts went beyond what was necessary for their own interests. Jason Ng, a lawyer, eyewitness, and participant in the occupation, provides an illustration that makes the community orientation clear:

*If [a protester] saw so much as a chewing gum splotch on the sidewalk, he would quietly pick up a putty knife and start scraping. Soon, two others like him would join in and a fledgling gum removal team would spring to life.*⁹⁵

The movement also tried to minimize the economic impact of the occupation. Originally, the occupation was scheduled to begin on October 1, a national holiday, to minimize economic impact.⁹⁶ However,

⁹¹ *Ibid.*, p. 5.

⁹² Michael Forsythe & Alan Wong, "Protest Organizers Claim Progress for Hong Kong", *New York Times*, 6 October 2014, available at: <https://www.nytimes.com/2014/10/07/world/asia/hong-kong-protests.html>, accessed on 12 April 2019.

⁹³ Jason Y. Ng, *Umbrellas in Bloom: Hong Kong's occupy movement uncovered*, Blacksmith Books, 2016, p. 167.

⁹⁴ *Ibid.*, p. 223 (waste management was a high priority). Jason Ng gives first-hand account of clean-up efforts: "Several times a day cleaning crews from the supply units fanned out across the village with rags, brushes and buckets. They scrubbed toilets, wiped counters, and replenished toilet paper." *Ibid.* p. 234.

⁹⁵ *Ibid.*, p. 167.

⁹⁶ Cheung and Lam, see note 83.

the government's response to student protests created a unique moment that resulted in the occupation starting a few days earlier. In addition, the occupation lasted some 79 days, much longer than the three days originally planned.⁹⁷ Consequently, the occupation had a negative impact on the local economy.⁹⁸ Ultimately, these economic consequences were part of the reason for ending the occupation.⁹⁹

The movement stressed that protesters "must not engage in physical or verbal conflicts with law enforcers, nor damage any public properties."¹⁰⁰ To prevent violence, the movement provided non-violence workshops and deployed hundreds of stewards.¹⁰¹ For example, at the occupation site in Admiralty, 200 stewards were on duty

⁹⁷ *Ibid.*

⁹⁸ For example, sales were down by 46% at the Pacific Place mall next to the occupy site in Admiralty. See *Tiffany Ap & Phila Siu*, "46pc sale slump at Pacific Place, says tenant of upmarket mall", *South China Morning Post* 1 December 2014, available at: <https://www.scmp.com/news/hong-kong/article/1653234/46pc-sales-slump-pacific-place-says-tenant-upmarket-mall>, accessed 2 April 2019. However, an analysis done by the World Bank found that the Occupy Central movement did not negatively affect the positive business environment in Hong Kong. See *Sijia Jiang*, "World Bank says Occupy protests fail to impact Hong Kong's business climate", *South China Morning Post*, 29 October 2014, available at: <https://www.scmp.com/business/economy/article/1627626/world-bank-says-occupy-protests-fail-impact-hks-business-climate>, accessed 2 April 2019.

⁹⁹ "Occupy violence at Legco complex a step too far", *South China Morning Post*, 20 November 2014, available at: <https://www.scmp.com/comment/insight-opinion/article/1644066/occupy-violence-legco-complex-step-too-far>, accessed 2 April 2019 ("As acknowledged by one of the three core leaders [of Occupy Central], the disruptions and grievances caused by the Occupy movement have exceeded acceptable levels."); Felix Chung, "End Occupy protests to give small businesses a chance to recover, before it's too late," *South China Morning Post*, November 11, 2014, available at: <https://www.scmp.com/comment/insight-opinion/article/1637478/end-occupy-protests-give-small-businesses-chance-recover-its?page=all>, accessed 2 April 2019.

¹⁰⁰ Occupy Central with Love and Peace, "Manual of Disobedience", 24 September 2014, available at: <https://oclpkenglish.wordpress.com/2014/09/24/manual-of-disobedience/>, accessed 2 April 2019.

¹⁰¹ See *Occupy Central with Love and Peace*, "Basic Tenets", available at <https://oclpkenglish.wordpress.com/about-2/tenets/>, accessed 2 April 2019 ("Mandatory workshops on the art and skill of non-violence will be provided" . . . and "Hundreds of stewards will be deployed during Occupy Central to prevent rowdy behavior by or instigated by by-standers.").

to keep the peace.¹⁰² Remarkably, these efforts to protect property were so effective that the occupation went for more than 50 days before a single piece of glass was broken.¹⁰³ This non-violence was ended when a small group smashed two glass doors at the building that houses the Legislative Council.¹⁰⁴ Although a few hundred protesters were at the scene, this was not the work of the movement, but instead an effort by a more radical minority of the protesters to end the stalemate with the government.¹⁰⁵ Significantly, it was Occupy Central stewards who reported the incident to the police.¹⁰⁶

Another significant example of a community orientation in the movement was the commitment of protestors to continuing their studies. Twelve days into the occupation, volunteers built a “study corner” with tables, chairs, and LED lamps so that students could keep up on their school work.¹⁰⁷ The study corner became so popular that it was expanded. By the end of October it had tripled in size, had two full-time volunteers to oversee it, and many volunteer tutors.¹⁰⁸ According to Jason Ng, a journalist and adjunct law professor, this was “one of the most talked about features” of the movement: “protestors in full protective gear doing homework with pencils and highlighters. The phenomenon was bizarre, inspiring, and so very Hong Kong.”¹⁰⁹ While on one hand the students were protecting themselves from the consequences of missing classes, it also shows the students’ commitment to community values of education and not disappointing their parents and elders.

Of course, the protesters’ non-violence was a political strategy meant to build support for the protest movement. However, this non-violence

¹⁰² Jason Y. Ng, see note 94, p. 232.

¹⁰³ South China Morning Post, see note 99 (“Until yesterday, the world had been watching in amazement that our mass street protests had continued for more than 50 days without a single piece of glass broken.”).

¹⁰⁴ Joyce Ng & Samuel Chan, “Occupy condemns attack on Legco as pan-democrats claim protesters were ‘misled’”, 19 November 2014, available at: <https://www.scmp.com/news/hong-kong/article/1643678/occupy-condemns-attack-legco-pan-democrats-claim-protesters-were>, accessed 2 April 2019.

¹⁰⁵ *Ibid.*

¹⁰⁶ Jason Y. Ng, see note 94, p. 144.

¹⁰⁷ *Ibid.*, p. 175-76.

¹⁰⁸ *Ibid.*, p. 193-194.

¹⁰⁹ *Ibid.* p. 172.

and respect for property also reflects the Asian cultural commitment to the interests of the community. While non-violence has been used by other protest movements, here it seemed to be extraordinary. Jason Ng summarized these efforts in these words:

*[The protesters] braved police crackdowns for their political ideals, but were never too busy to clean up after themselves or keep each other well-fed. The occupy movement was bloodless, but it was also spotless and selfless. No wonder the foreign press called this “the most civilized street protest in the world.”*¹¹⁰

Notwithstanding being “the most civilized street protest in the world,” the government prosecuted key leaders of the movement on criminal charges for inciting a public nuisance. This reflects the importance of community rights to avoid the inconvenience caused by the occupation. The court applied a “reasonableness test” to determine whether the protesters’ “conduct impinged unreasonably on the rights of others.”¹¹¹ Although the court asserted that it was giving “substantial weight” to the protesters’ right to demonstrate under Hong Kong’s Basic Law,¹¹² it concluded that “the obstruction in the planned occupation” impinged “unreasonably upon the rights of others” so much so “that the significant and protected right to demonstrate should be displaced.”¹¹³ This “unreasonable” impingement was proven by evidence such as certificates showing “the number of public bus routes that had to be diverted or suspended” and “the number of passengers who would be affected.”¹¹⁴

C. OCCUPY CENTRAL ENDED IN PART TO PROTECT COMMUNITY INTERESTS

While it is perhaps debatable whether the inconvenience caused by the occupation made the exercise of the protesters’ rights unreasonable, the leaders’ concern about the inconvenience was one of the reasons that the occupation ended. After the one episode of violence associated with a small group of protesters, one of the three core leaders of the

¹¹⁰ *Ibid.* p. 151.

¹¹¹ HKSAR v. Tai Yiu Ting, DCCC 480/2017, ¶ 68.

¹¹² For example, see *Ibid.* ¶ 278.

¹¹³ *Ibid.* ¶¶ 363, 398 (“the obstruction that would be caused by the occupation . . . made the obstruction an unreasonable use of the carriageway in or in the neighbourhood of Central”).

¹¹⁴ *Ibid.* ¶ 381.

movement concluded that “the disruptions and grievances caused by the Occupy movement have exceeded acceptable levels.”¹¹⁵ Another of the core leaders “resumed his teaching duties on campus” and suggested that “the least the protesters should do is make the occupied sites smaller.”¹¹⁶ Benny Tai, whose essay about non-violence spurred the movement, reported at a press conference that, for “the sake of occupier safety and for the sake of the original intention of love and peace, as we prepare to surrender, we three [core leaders] urge students to retreat, to put down deep roots in the community and transform the movement to extend the spirit of the umbrella movement.”¹¹⁷ This “forthright and prominent” call gave voice to “deepening fears that the street occupations were angering residents and risking clashes with the police.”¹¹⁸

Concerns of Hong Kong residents were reflected in responses to surveys about the movement. By late November, a University of Hong Kong survey showed “that nearly 83% of Hongkongers want[ed] the Occupy Central protests to stop, while more than two-thirds believe[d] the government should clear the protest sites.”¹¹⁹ This was a substantial erosion in support for the movement. In late October, support for the movement was growing.¹²⁰ A series of surveys done by the Chinese University of Hong Kong in September, October, and November 2014

¹¹⁵ South China Morning Post, see note 100.

¹¹⁶ Albert Cheng, “End occupation of Hong Kong and focus on mass electoral campaign for democracy”, South China Morning Post, 20 November 2014, available at: <https://www.scmp.com/comment/insight-opinion/article/1644569/end-occupation-hong-kong-and-focus-mass-electoral-campaign>, accessed 11 April 2019 (referring to Professor Kin-man Chan).

¹¹⁷ Michelle Chen & James Pomfret, “Hong Kong Occupy founders urge students to retreat amid fears of violence”, Reuters, 1 December 2014, available at: <https://uk.reuters.com/article/uk-hongkong-china/hong-kong-occupy-founders-urge-students-to-retreat-amid-fears-of-violence-idUKKCN0JG0BG20141202>, accessed on 11 April 2019.

¹¹⁸ Chris Buckley, “Leaders of Hong Kong Democracy Campaign Urge Students to Retreat”, New York Times, 2 December 2014, available at: <https://www.nytimes.com/2014/12/03/world/asia/hong-kong-protests.html>, accessed 11 April 2019.

¹¹⁹ Gary Cheung, “Overwhelming majority of Hongkongers want Occupy protests to end: survey”, South China Morning Post, 19 November 2014, available at: <https://www.scmp.com/news/hong-kong/article/1643998/overwhelming-majority-hong-kongers-want-occupy-protests-end-survey>, accessed 11 April 2019.

¹²⁰ See Peter So, “Public support for Occupy movement growing, survey shows”, South China Morning Post, 22 October 2014, available at: <https://www.scmp.com/news/hong-kong/article/1622223/occupy-movement-continuing-gain-momentum-survey-shows>, accessed 11 April 2019.

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showed support was up in October, but opposition to the movement exceeded support for it by November. Figure 3, below, shows the proportion of respondents that supported and opposed the movement over those three months.

Figure 3. Survey Results from Chinese University of Hong Kong¹²¹

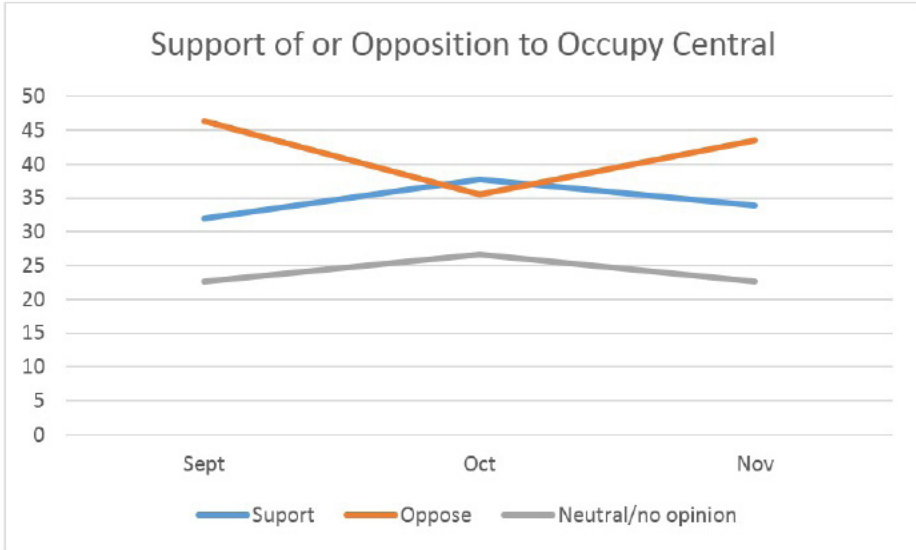


Figure 3 shows that in September, support for Occupy Central was modest and opposition was fairly strong. By mid-October, however, the support for the movement was greater than the opposition. By November, those gains had mostly been lost, and the trend was likely downward. The survey was conducted November 5-11,¹²² prior to the attack on the building housing the Legislative Council, an event that likely eroded public support even more. By the time the courts had issued orders for the occupation to end, it was clear that the costs of the movement were outstripping its potential benefits, and this was evident

¹²¹ The data for this figure came from a press release from the Centre for Communication and Public Opinion Survey of The Chinese University of Hong Kong, 16 November 2014, available at: <http://www.com.cuhk.edu.hk/ccpos/images/news/TaskForce20141116-e.pdf>, accessed 11 April 2019, p.7. The following categories were combined: Strongly support and Quite support for Support, Strong not support and Quite not support for Oppose, and So-so and No Opinion/Refuse to answer for Neutral/no opinion.

¹²² *Ibid.*

to many in the movement. By late November, half of protesters were ready to retreat if asked by the student organizations involved in the movement.¹²³ Thus, concerns about the impact on the community, along with concerns about efficacy and the safety and comfort of protestors, brought the movement to an end.

V. CONCLUSION

Occupy Central was a remarkable social movement. While its implications will continue to be studied and debated, it provides an example of a large number of people exercising their rights to freedom of expression and freedom of association in a society with Asian cultural characteristics. While the exercise of these freedoms is consistent with protection of fundamental rights expected from a society committed to the rule of law, the particulars of the movement in Hong Kong were also consistent with Asian cultural commitment to the community. The motivation for the movement was to promote the community's ability to nominate candidates for the Chief Executive of Hong Kong, not to protect individual freedoms. The manner in which the protesters exercised their rights also reflected a concern for the rights of the community. While the occupation caused traffic problems and other inconveniences, the movement worked to reduce or eliminate the negative impact to the community. The protesters directed traffic, cleaned up after themselves, and made arrangements to keep the peace. After 79 remarkable days of occupation, and in the face of court orders to disband the occupation, it became clear that the costs to the community and to the protesters were too great, and that it was time to retreat and work within the community. That was a significant factor in the decision to retreat. In the aftermath of the movement, its organizers have been convicted of inciting a public nuisance because the court determined that the inconvenience to the public outweighed the rights of the protesters to exercise their freedom through the occupation.

This concern about the community was consistent with Hong

¹²³ Jeffie Lam & Alan Yu, "Half of Occupy Central protestors ready to pack it in if asked by organisers", *South China Morning Post*, 20 November 2014, available at: <https://www.scmp.com/news/hong-kong/article/1644902/half-occupy-central-protesters-ready-pack-it-if-asked-organisers>, accessed 11 April 11, 2019.

Kong's cultural commitment to the interests of the community as measured by Hofstede's Individualism score. Hong Kong's score of 25 for Individualism is similar to other Asian countries and much lower than countries in Europe-North America. This shows that Hong Kong's culture, compared to cultures in Europe-North America, puts a higher value on community interests and a lower value on individual interests.

This Asian commitment to the community as compared to individuals is reflected in the fundamental rights scores of Asian countries in the World Justice Project Rule of Law Index. Although Hong Kong in many respects resembles European and North American countries in its commitment to rule of law, its scores for fundamental rights, and for freedom of expression and freedom of association, are significantly lower. This is true for other countries in Asia as well. Japan has the highest overall score in Asia on the Rule of Law Index (excluding Australia and New Zealand as being culturally distinct), but its score on Fundamental Rights, a respectable 0.78, is still substantially lower than about half of the Europe-North America countries. In light of the Asian cultural commitment to community interests, which is reflected in Occupy Central narrative, it seems unlikely that Asian countries will ever earn scores among the highest for fundamental rights on the World Justice Project Rule of Law Index. This conclusion is not meant to be a criticism; ultimately, each culture must strike a balance between individual and community interests. While the World Justice Project may emphasize the importance of protection of certain individual rights, that may be a reflection of the values of those involved in developing the measures rather than a universal consensus.

**Appendix 1. Individualism Correlated Freedom of Expression,
Freedom of Association and Fundamental Rights** ¹²⁴

Europe-North America (including Australia and New Zealand)

Country	Individualism	Expression	Association	Fundamental Rights
US	91	0.81	0.83	0.72
Australia	90	0.8	0.82	0.79
UK	89	0.85	0.89	0.81
Netherlands	80	0.84	0.86	0.84
Canada	80	0.86	0.88	0.83
Hungary	80	0.48	0.48	0.58
New Zealand	79	0.83	0.83	0.8
Italy	76	0.69	0.79	0.73
Belgium	75	0.81	0.86	0.84
Denmark	74	0.96	0.98	0.9
Sweden	71	0.85	0.88	0.86
France	71	0.73	0.82	0.74
Norway	69	0.93	0.94	0.88
Germany	67	0.85	0.9	0.85
Finland	63	0.91	0.93	0.92
Estonia	60	0.8	0.84	0.83
Poland	60	0.62	0.63	0.66
Czech Repub	58	0.74	0.79	0.78
Austria	55	0.8	0.82	0.84
Spain	51	0.72	0.82	0.78
Greece	35	0.69	0.76	0.66
Croatia	33	0.64	0.75	0.65
Romania	30	0.68	0.67	0.7
Bulgaria	30	0.61	0.67	0.6
Portugal	27	0.81	0.86	0.79
Slovenia	27	0.55	0.55	0.73
Correlation with Individualism: Europe-N.Am.		0.453418392	0.392863997	0.377158795
t value E-NA		2.439721299	2.048843561	1.953023545
p value E-NA		0.02213121	0.051112294	0.062097292

¹²⁴ Data for the Appendix comes from the Geert Hofstede website and from the World Justice Project. For the Geert Hofstede data on Individualism, see note 47. For the World Justice Project data, see note 33. Correlations, t values and p values were calculated using formulae in an excel spreadsheet.

East Asia and the Pacific (excluding Australia and New Zealand)

Country	Individualism	Expression	Association	Fundamental Rights
Japan	46	0.72	0.73	0.78
Philippines	32	0.56	0.57	0.42
Malaysia	26	0.46	0.44	0.48
Hong Kong	25	0.57	0.62	0.66
Singapore	20	0.5	0.49	0.69
Thailand	20	0.52	0.46	0.48
China	20	0.12	0.17	0.32
South Korea	18	0.65	0.69	0.74
Indonesia	14	0.67	0.66	0.52
Cambodia	NA	0.31	0.41	0.35
Mongolia	NA	0.63	0.68	0.58
Myanmar	NA	0.4	0.35	0.31

Correlation with Individualism: All	0.639902409	0.64075847	0.613405491
t value all	4.783564182	4.794416177	4.461747852
p value all	3.48569E-05	3.37645E-05	8.92216E-05

Correlation with Individualism: Asia	0.297269048	0.320331396	0.307092647
t value Asia	0.823738081	0.894660879	0.853744006
p value Asia	0.437250083	0.400683059	0.421498309