

**DOES “ONE BELT, ONE ROAD” MEAN “ONE
COUNTRY, ONE SYSTEM?”**

**AN ANALYSIS OF HONG KONG’S VANISHING
AUTONOMY THROUGH AN “ONE BELT, ONE ROAD”
INFLUENCED EDUCATIONAL SCHOLARSHIP**

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CONTENTS

CONTENTS.....	395
INTRODUCTION	396
I. “ONE BELT, ONE ROAD”	398
A. China’s Economy	398
B. People-to-People Bond.....	402
II. HONG KONG’S ROLE IN “ONE BELT, ONE ROAD”	404
A. Relationship between China and Hong Kong	407
B. Higher -Level Education in Hong Kong.....	410
C. Impact of Basic Law on OBOR Education Scholarship Proposal.....	412
D. Benefits and Issues with OBOR and International Scholarship Program.....	416
E. Conclusion	421
III. RECOMMENDATIONS.....	421
A. Hong Kong – China Relations.....	422
B. Educational Reform	424

[†] I want to thank everyone on JILC, who worked tirelessly to help me improve this note, especially our managing editor, Katelyn Lancto, who to me, went above and beyond her role to get this note published. I also want to thank my father, who has endured and supported me through every step of my life, without him, none of this would have ever been possible. Thank you for everything.

INTRODUCTION

The Hong Kong's Chief Executive, Leung Chun-Ying, made his annual policy address for Hong Kong on January 13, 2016.¹ The annual policy address is a mandate under Basic Law article 64, which states that the Chief Executive "shall present regular policy addresses to the Council."² The 2016 address was supportive of the "One Belt, One Road" (OBOR) program, and detailed the benefits Hong Kong could derive from participating in it.³ The OBOR program is China's plan to create a network of regional infrastructure projects that resembles the original "Silk Road" trade routes that began during the Han Dynasty (207 BCE - 220 CE).⁴ A broader goal of the OBOR is to connect associated countries within an infrastructure network that "enhance[s] policy coordination across the Asian continent."⁵

Hong Kong can support the OBOR program in numerous ways, including by being a financial center for loans and trade, and opening up the education system for international students.⁶ However, this paper will focus specifically on a proposed HK\$1 billion investment to a scholarship program intended to attract students from countries participating in the OBOR program to pursue education in Hong Kong.⁷ Generally, the international scholarship program will benefit the OBOR program by creating stronger ties between the students and other people involved from the different countries, which tends to indirectly improve the educational system in Hong Kong.⁸ However, it lacks any direct tangible benefits to the economy and citizens of Hong Kong.⁹ Such a proposal to support an educational program that brings no direct benefits to Hong Kong citizens

1. Leung Chun-Ying, Chief Executive, Hong Kong Special Administrative Region, Policy Address (Jan. 13, 2016) available at <http://www.policyaddress.gov.hk/2016/eng/p1.html> (last visited May 17, 2017) [hereinafter Policy Address].

2. *Id.*; see also XIANGGANG JIBEN FA art. 64 (H.K.) [hereinafter Basic Law].

3. Policy Address, *supra* note 1.

4. Joshua J. Mark, *Silk Road, Definition*, ANCIENT HISTORY ENCYCLOPEDIA available at http://www.ancient.eu/Silk_Road/ (last visited May 17, 2017).

5. SCOTT KENNEDY & DAVID A. PARKER, BUILDING CHINA'S "ONE BELT, ONE ROAD", CTR. FOR STRATEGIC & INT'L STUDIES, (Apr. 3, 2015) available at <http://csis.org/publication/building-chinas-one-belt-one-road> (last visited May 22, 2017).

6. *Id.*

7. See Policy Address, *supra* note 1.

8. *Id.*

9. *Id.*

2017] Does “One Belt, One Road” Mean “One County One System?” 397

is a violation of the Basic Law, which mandates the Hong Kong Government to “use its financial revenues *exclusively* for its own purpose, and they shall not be handed over to the Central People’s Government” (emphasis added).¹⁰ Therefore, a substantially costly and long-term economic policy has to serve a direct purpose to its own citizens before it should be accepted.

This paper will analyze the proposal for Hong Kong to initiate an educational program focused on international students. First, this paper will examine the proposal under Articles 2 and 106 of the Basic Law of Hong Kong, which grants Hong Kong autonomy in creating its own policies and exclusive use of its own finances.¹¹ Through this examination, the note will analyze whether the Chief Executive has the power to create and direct this international scholarship program, as well as if his actions violate the Basic Law. Furthermore, it will also evaluate whether this proposal will be in the best interest of Hong Kong citizens and what impact it may have on Hong Kong’s economic outlook. Currently, Hong Kong citizens are faced with limited post-secondary school educational opportunities for qualified students.¹² The Chief Executive did not directly address the issue in his annual policy address,¹³ but this is a prevalent problem for the youth in Hong Kong.¹⁴ To evaluate the economic outlook, the paper will consider the long-term economic impact of Hong Kong’s lack of access to higher-level education.¹⁵ Additionally, this note will look into the effects of increasing the number of international students in Hong Kong’s higher-level education system on future enrollment levels.

This note will incorporate the above discussions and divide them into three sections. Section I will focus on the purpose of the OBOR program, which includes examining the goal of the initiative along with the potential impact it will have on China’s economy and any international issues that might arise from it. Section II will turn to examining the proposed educational scholarship and investment by Hong Kong towards the OBOR program. This section will also examine the political issues the program

10. XIANGGANG JIBEN FA art. 106 (H.K.).

11. *Id.* art. 2, 106.

12. See *Examination Statistics*, HONG KONG EXAMINATIONS AND ASSESSMENT AUTH. (2015), *available at* http://www.hkeaa.edu.hk/DocLibrary/HKDSE/Exam_Report/Examination_Statistics/dseexamstat15_1.pdf (last visited May 17, 2017).

13. See Policy Address, *supra* note 1.

14. See *Examination Statistics*, *supra* note 12.

15. Higher-level education will be deemed as any level of post-secondary education.

could cause and the purpose and goal of the program, specifically for Hong Kong and its citizens. Through the results of this examination, a cost-benefit analysis of the program will be conducted focusing on the interests of Hong Kong citizens. The final section will outline alternative educational recommendations that Hong Kong could invest in, which could be more beneficial to Hong Kong's own citizens and improve relations with China.

I. "ONE BELT, ONE ROAD"

In 2013, Chinese President Xi Jinping introduced the "One Belt, One Road" initiative as the "centerpiece of both his foreign policy and domestic economy strategy."¹⁶ Also called the "Silk Road Economic Belt" or the "21st Century Maritime Silk Road," the program has expanded from what was originally "a network of regional infrastructure projects" to "include promotion of enhanced policy coordination across the Asian continent, financial integration, trade liberalization, and people-to-people connectivity."¹⁷ "China's top economic planning agency, the National Development and Reform Commission (NDRC)" revealed the expansion.¹⁸ Under the plan, more than 60 countries, including those on the ancient Silk Road, will create a new economic land belt "through Central Asia, West Asia, the Middle East and Europe."¹⁹ Additionally, "a maritime road [(a sea lane created by building ports) will also link] China's port facilities with the African coast, pushing up through the Suez Canal into the Mediterranean."²⁰ The "One Belt, One Road" project is one of the most influential recent economic policies for China. Its operation will thus require a massive amount of resources and support from various stakeholders from both the state and individual level. Therefore, to fully understand why China is pursuing this program, it is necessary to first examine China's economy.

A. China's Economy

In "the six years [leading] up to 2007[,] China's GDP grew at an average rate of 11 percent, with investment equaling 41.5 percent of

16. KENNEDY & PARKER, *supra* note 5.

17. *Id.*

18. *Id.*

19. Francis Cheung & Alexious Lee, *A Brilliant Plan, One Belt, One Road*, CLSA (2015), available at <https://www.clsa.com/special/onebeltoneroad/> (last visited May 17, 2017).

20. *Id.*

2017] Does “One Belt, One Road” Mean “One County One System?” 399

GDP.”²¹ Following the global crisis in 2007, China’s growth rate dropped to 7 percent, but investment increased to 50 percent of GDP.²² This shows that China’s increased investments in its own economy have not been able to sustain its previous GDP growth rate.²³ It is hypothesized that a large part of the growth that China sustained for so many years was through massive investments in capital-intensive industries, mainly in construction and manufacturing.²⁴ Additionally, China is also a world leader in the production of steel, iron and aluminum.²⁵ Currently, all these industries are struggling with excessive production that, if slowed down, would repress the economy even more.²⁶ The continued production, despite a lack of demand, has led to a buildup of large surpluses in steel, iron and aluminum that are unsustainable.²⁷ Given China’s troubles in “transition[ing] to a ‘new normal’ of slower and more sustainable economic growth,” a stimulus is necessary “to help cushion the effects of this deepening slowdown.”²⁸ The use of the OBOR program would create infrastructure programs that would “run through some of China’s poorest and least developed regions,” connecting these areas to the richer coastal areas and other “countries along its periphery.”²⁹ This will allow China to use a large part of its production surplus on this project and help with the problem of overproduction it currently faces.³⁰ However, some economists have estimated that even with the proposed OBOR opportunities, this would only amount to “[i]nvestments of [US]\$1 trillion over 10-15 years.”³¹ This does not come close to China’s annual internal investments, which amount to nearly US\$5 trillion.³² These internal investments focus on

21. David Dollar, *China’s Rise As A Regional And Global Power: The AIIB and the ‘One Belt, One Road’*, BROOKINGS INST. (July 15, 2015), available at <http://www.brookings.edu/research/papers/2015/07/china-regional-global-power-dollar> (last visited May 17, 2017).

22. *Id.*

23. *Id.*

24. KENNEDY & PARKER, *supra* note 5.

25. EW World Economy Team, *China Industry Sectors*, ECONOMY WATCH, available at http://www.economywatch.com/world_economy/china/industry-sectors.html (last visited Mar. 9, 2017).

26. KENNEDY & PARKER, *supra* note 5.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Bert Hofman, *China’s One Belt One Road Initiative: What We Know Thus Far*, THE WORLD BANK (Dec. 4, 2015), available at <http://blogs.worldbank.org/eastasiapacific/china-one-belt-one-road-initiative-what-we-know-thus-far> (last visited May 17, 2017).

32. *Id.*

creating unnecessary construction projects, specifically to use the steel, iron and aluminum surpluses to artificially decrease surplus numbers.³³ Therefore, the OBOR program does not change the current status quo to solve China's overproduction problem. While there is potential for the accrual of benefits as individual countries that participate in the OBOR program expand, it is unlikely that even this will be sufficient to solve China's underlying overproduction problems.³⁴

Regardless of the ability of the OBOR to absorb China's overproduction of basic raw materials, it is, in China's opinion, essential that it maintain its GDP growth rate.³⁵ The OBOR is believed to possess the ability to supplement this endeavor,³⁶ as it is "designed to [push] forward [China's] strategic and economic interests around the world."³⁷ China has used "infrastructure projects to bolster its influence among needy nations for some time, most notably in Africa, but the OBOR takes those ambitions to another level."³⁸ "The [OBOR] would involve 60 countries" and with China being "one of the world's biggest trading nations, [it would] reduce the costs of transporting goods and secure access to key markets and commodities."³⁹ Furthermore, it would "boost China's role in global finance," and the additional lending to other countries could advance China's "quest for greater international status for the renminbi, which it is promoting as a global reserve currency."⁴⁰

As part of the whole OBOR program, China also took the opportunity to "launch the new Asian Infrastructure Investment Bank [(AIIB)]," due to China's concern regarding the "governance structure of existing International Financial Institutions (IFIs)."⁴¹ China has had massive issues with the limited "voting shares of fast-growing emerging

33. KENNEDY & PARKER, *supra* note 5; Dollar, *supra* note 21.

34. Hofman, *supra* note 31.

35. *China Premier Li Says Economy to Maintain Steady Growth*, REUTERS (Nov. 6, 2016), available at <http://www.reuters.com/article/us-china-economy-li-idUSKBN131022> (last visited May 17, 2017).

36. Michael Schuman, *China's New Silk Road Dream*, BLOOMBERG BUS. WK. (Nov. 25, 2015), available at <http://www.bloomberg.com/news/articles/2015-11-25/china-s-new-silk-road-dream> (last visited June 6, 2017).

37. *Id.*

38. *Id.*

39. *Id.*

40. See *id.*; Stephen Mulvey, *Why China's Currency Had Two Names*, BBC NEWS (June 26, 2010), available at <http://www.bbc.com/news/10413076> (last visited Mar. 4, 2017) (explaining "Renminbi" is the official name of the currency introduced by the Communist People's Republic of China at the time of its foundation in 1949. It means 'the people's currency').

41. Dollar, *supra* note 21.

2017] Does “One Belt, One Road” Mean “One Country One System?” 401

markets” within IFIs, and the lack of focus of IFIs on infrastructure and growth investments.⁴² The “Zedillo Report”⁴³ raised further concern towards current financing opportunities for developing countries. The report found that the presence of a resident board⁴⁴ on IFIs both added costs and reduced efficiency for developing countries seeking infrastructure loans through the World Bank.⁴⁵ China’s development and launch of the AIIB used the ideas and recommendations of the Zedillo Report to reduce costs and increase efficiency for developing countries seeking a loan for infrastructure projects.⁴⁶ Using this platform, China has been able to gain international leverage without the restrictions and limitations imposed on them by IFIs through international conventions and trade treaties.⁴⁷ Reflecting “China’s preference to avoid[,] if possible[,] formal treaties with measurable compliance requirements in favor of less formal arrangements,” the OBOR and AIIB do not create any “binding state-to-state agreements.”⁴⁸ Furthermore, China’s “President Xi Jinping has emphasized ‘Three Nos’ in any relationship China forms with a country through the OBOR: ‘1) No interference in the internal affairs of other nations; 2) No desire to increase the so-called ‘sphere of influence’; and 3) No desire for hegemony or dominance.’”⁴⁹ Spearheading such a pivotal program, China still needs to ensure cooperation of all members of the OBOR, which it wishes to achieve through “people-to-people” bonds or ties.⁵⁰

42. *See id.*

43. *See* Johannes F. Linn, *The Zedillo Commission Report on World Bank Reform: A Stepping Stone for the G-20 Summits in 2010*, BROOKINGS INST. (Nov. 18, 2009), available at <https://www.brookings.edu/articles/the-zedillo-commission-report-on-world-bank-reform-a-stepping-stone-for-the-g-20-summits-in-2010/> (last visited Mar. 4, 2017) (Named after former Mexican President Ernesto Zedillo who chaired a High-Level Commission on Modernization of World Bank Group Governance that looked into the loan approval process for developing countries).

44. *Id.* (A resident board is a permanent group of individuals who evaluate loan proposals for IFIs. The Zedillo Report found that these boards did not have the ability to evaluate a specific countries proposal that were unique. Resident boards followed broad protocols that hindered financing opportunities for developing countries since they normally did not fit all the requirements used by these boards in their determination for loan suitability).

45. Dollar, *supra* note 21.

46. *Id.*

47. *Id.*

48. KENNEDY & PARKER, *supra* note 5.

49. Cheung & Lee, *supra* note 19.

50. “Yidai Yilu” Guihua (Quan Wen) (“一带一路规划案” [Action Plan on the Belt and Road Initiative] (promulgated by the Nat’l Dev. and Reform Comm’n, Ministry of Foreign Affairs

B. People-to-People Bond

The OBOR program envisions numerous bilateral and multilateral agreements among participating nations because China does not want to have a formal agreement encompassing all countries.⁵¹ An essential component of the program will be to foster “people-to-people” ties:⁵²

People-to-people bond provides the public support for implementing the Initiative. We should carry forward the spirit of friendly cooperation of the Silk Road by promoting extensive cultural and academic exchanges, personnel exchanges and cooperation, media cooperation, youth and women exchanges and volunteer services, so as to win public support for deepening bilateral and multilateral cooperation.⁵³

Specifically, the program is intended to focus on exchanging students from different countries in order to promote cooperation.⁵⁴ “China [already] provides 10,000 government scholarships to [citizens of] the countries along the [OBOR] every year.”⁵⁵ China assumes that multiple bilateral agreements between countries involved with the OBOR program will be successful if a foundation of education and understanding between all the different countries is instilled.⁵⁶ This belief follows the underlying Confucian ideology,⁵⁷ that “only a government based on virtue could truly win the hearts of men,”⁵⁸ reflected in the following passage:

Lead the people by regulations, keep them in order by punishments . . . and they will flee from you and lose all self-respect. But lead them by virtue and keep them in order by the established morality . . . and they will keep their self-respect and come to you.⁵⁹

and Ministry of Commerce, Mar. 28, 2015) ST. COUNCIL GAZ. (Mar. 30, 2015) (China) [hereinafter Action Plan].

51. See Dalton Lin, *Exclusive: “One Belt, One Road” and China’s International Relations*, US-CHINA PERCEPTION MONITOR (Mar. 21, 2016), available at <http://www.uscnpm.org/blog/2016/03/21/one-belt-one-road-and-chinas-international-relations/> (last visited May 24, 2017).

52. See KENNEDY & PARKER, *supra* note 5; Cheung & Lee, *supra* note 19; Hofman, *supra* note 31.

53. Action Plan, *supra* note 50.

54. *Id.*

55. *Id.*

56. *See id.*

57. See JIANFU CHEN, *CHINESE LAW: CONTEXT AND TRANSFORMATION* 10 (2008).

58. *Id.*

59. *Id.* citing DERK BODDE & CLARENCE MORRIS, *LAW IN IMPERIAL CHINA: EXEMPLIFIED BY 190 CH’ING DYNASTY CASES (TRANSLATED FROM THE Hsing-an Hui-lan)*, WITH HISTORICAL, SOCIAL, AND JURIDICAL COMMENTARIES (Harvard U. Press, 1967).

2017] Does “One Belt, One Road” Mean “One County One System?” 403

Under the OBOR concept, the benefits to educate other countries in virtue and morality will far outweigh any strict contractual agreement.⁶⁰ This is the basis for implementing a strong educational program to support the OBOR program.

Some analysts doubt that the OBOR can be successfully implemented simply through the use of bilateral agreements between pairs of OBOR countries.⁶¹ Scott Kennedy and David A. Parker, of the Center for Strategic and International Studies (CSIS), believe that China’s “past difficulties investing in infrastructure abroad, especially through bilateral arrangements,” could mean that “the proposed projects could well end up as little more than a series of expensive boondoggles.”⁶² Furthermore, CSIS argues that:

Given Chinese construction companies’ poor track record operating in foreign countries (including frequent mistreatment of local workers), a major increase in the scale of their external activities increases the risk of damaging political blowback that could harm [China’s] image or lead to instability in host countries – particularly if the efforts do not generate lasting benefits for local economies.⁶³

Another issue of using bilateral agreements is that many of the projects are destined for economically weak countries with dubious governance and freedom.⁶⁴

China’s money could [be] lost to corruption or wasted in poorly conceived plans, [as] Chinese companies already have a suspect record of implementing such projects. According to data compiled by the American Enterprise Institute (AEI), about a quarter of all overseas investments and construction and engineering projects undertaken by Chinese companies from 2005 to 2014 – worth \$246 billion – have been

60. See Cal Wong, *One Belt, One Road, One Language?*, THE DIPLOMAT (May 12, 2017), available at <http://thediplomat.com/2017/05/one-belt-one-road-one-language> (last visited May 24, 2017).

61. See Hofman, *supra* note 31; Schuman, *supra* note 36; see KENNEDY & PARKER, *supra* note 5.

62. KENNEDY & PARKER, *supra* note 5.

63. *Id.*

64. See *The Belt and Road Initiative: Country Profiles*, HKTDC RES., available at <http://china-trade-research.hktdc.com/business-news/article/The-Belt-and-Road-Initiative/The-Belt-and-Road-Initiative-Country-Profiles/obor/en/1/1X000000/1X0A3610.htm> (last visited May 17, 2017); see also Arch Puddington & Tyler Roynance, *Populists and Autocrats: The Dual Threat to Global Democracy*, in FREEDOM IN THE WORLD 2017 1, 14 (2017); see also GDP (Current US\$), WORLD BANK, available at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?view=map> (last visited May 17, 2017).

stalled by [mismanagement] or failed. Almost half were in transport and energy – just the sort of projects that will be key to [the OBOR].”⁶⁵

Additionally, there is no guarantee that China’s investments and educational initiatives will win it “camaraderie” with participating countries.⁶⁶ “In Africa, where China has a long record of investment, a Gallup poll released in August [2015] showed the approval rating of [China’s] leaders had dropped among Africans in 7 of the 11 countries” surveyed.⁶⁷ J. Peter Pham, director of the Africa Center at the Atlantic Council, a Washington, D.C. think tank, stated “[t]he goodwill expressed at the highest levels doesn’t trickle down into warm sentiments” as “Chinese soft power is relatively weak.”⁶⁸

Given all the concerns facing China’s use of bilateral agreements between countries involved with the OBOR, many analysts suspect that “formal agreement[s]” such as treaties, conventions, or partnerships are necessary for the OBOR to prosper.⁶⁹ “If a more formal agreement were to ensue, it would be among the largest of its kind, and similar in size to the just-concluded Trans-Pacific Partnership Agreement (TPP).”⁷⁰ However, if the use of more formal agreements were to follow, the importance of a rather indirect educational program would not be as prominent as it would have been under the promotion of bilateral agreements. Therefore, given the current instability and poor projections for the OBOR under its current framework, it would be unwise to invest a large amount of resources into supplemental programs such as education.

II. HONG KONG’S ROLE IN “ONE BELT, ONE ROAD”

Through his policy address, Chief Executive Leung Chun-Ying expressed support for the OBOR program, as his speech mentioned the term “belt and road” 48 times.⁷¹ Many analysts felt that Leung’s address “skirt[ed] key governance and political issues,” particularly China’s influence over Hong Kong and concerns of autonomy granted to Hong

65. Schuman, *supra* note 36.

66. *Id.*

67. *Id.*

68. *Id.*

69. Hofman, *supra* note 31.

70. *Id.*

71. Joyce Ng, Tony Cheung, Jeffie Lam & Jennifer Ngo, *Hong Kong Chief Executive Faces Grilling from Lawmakers After Riding on China’s One Belt, One Road Economic Strategy in Policy Address*, S. CHINA MORNING POST (Jan. 14, 2016), available at <http://www.scmp.com/news/hong-kong/politics/article/1901021/hong-kong-chief-executive-faces-grilling-lawmakers-after> (last visited May 22, 2017).

2017] Does “One Belt, One Road” Mean “One County One System?” 405

Kong through Basic Law Article 2.⁷² Politician Regina Ip stated that Leung should have “offer[ed] stronger reassurances to Hong Kong people and address[ed] the confidence issues.”⁷³ Others went as far as saying that the policy speech was a “make or break” situation for Leung who was in his last year of office and would be seeking re-election.⁷⁴ His chances of becoming nominated by China would improve if he sided with its policy and the OBOR.⁷⁵

Leung pledged multiple avenues of cooperation with China under the OBOR program that involved Hong Kong being a “Platform for Capital Formation and Financing,” “Trade and Logistics,” “Professional and Infrastructure Services,” improved trading environment, and “people-to-people” ties.⁷⁶ The Hong Kong Special Administrative Region (HKSAR) Government will achieve these goals by setting up a “Steering Committee” specifically for the OBOR program.⁷⁷ The Chief Executive “will chair the committee” and “be responsible for formulating strategies and policies for Hong Kong’s participation in the [OBOR].”⁷⁸ One of its areas of focus contained a specific implementation plan on strengthening the people-to-people ties among citizens of OBOR countries.⁷⁹ The address stated:

[T]he HKSAR Government will first of all initiate work to foster “people-to-people bond” with the Belt and Road countries. We will join quasi-governmental organisations and various community bodies in Hong Kong to connect with the people of these places. As a highly international city with the widespread use of English, Hong Kong can provide a platform for educational, cultural and youth exchanges.

Hong Kong is home to world-class universities which use English as the medium of instruction. This has attracted students from all around the world. Currently, many students from the Belt and Road countries study in Hong Kong. Since the 2012/13 academic year, the Government has offered dedicated scholarships in the nine government-funded institutions. The scope of scholarships will be expanded to cover the whole Belt and Road region. The Government will promote Hong

72. Clare Baldwin & Donny Kwok, *Hong Kong Leader Pushes Integration with China in Policy Speech*, REUTERS (Jan. 13, 2016), available at <http://www.reuters.com/article/hongkong-policyaddress-idUSL3N14X1ZM20160113> (last visited May 17, 2017).

73. *Id.*

74. Ng et al., *supra* note 71.

75. *Id.*

76. Policy Address, *supra* note 1.

77. *Id.*

78. *Id.* ¶ 66.

79. *Id.*

Kong's tertiary education in the Belt and Road countries to recruit students for undergraduate courses in Hong Kong. This will encourage the interaction of Hong Kong people with those of the Belt and Road countries.

To attract more students from the Belt and Road countries to study in Hong Kong, the Government will increase the number of offers under the Targeted Scholarship Scheme, currently 10 per year, by about 100 in phases, and inject \$1 billion into the scholarship fund for this purpose. The Government will also encourage schools to include content about the Belt and Road countries in relevant subjects and student activities. At the same time, a priority theme will be introduced under the Quality Education Fund to encourage students to learn more about the Belt and Road Initiative and have more exchanges with the relevant regions, during which they may introduce the contributions that Hong Kong can make.⁸⁰

This proposal impacts the higher education system for Hong Kong students. There are already severe limitations to the number of placements available to students upon secondary school graduation.⁸¹ Depending on the implementation of the international educational program, it could take funds away from creating more placements for Hong Kong citizens, or could eliminate existing spots for domestic students in favor of international students.

The plan also serves the overall OBOR program goals that China has set⁸² and violates the Basic Law of the HKSAR that grants Hong Kong "a high degree of autonomy" and rejects directions from China.⁸³ It further violates the Basic Law because the financial revenue of the HKSAR Government should be "exclusively for its own purposes" and "not be handed over to the Central People's Government."⁸⁴ To better understand the problem behind the proposed educational program, an examination of the current relationship between China and Hong Kong, along with the current issues with higher-level educational opportunities for Hong Kong students, is necessary.

80. *Id.* ¶¶ 60-62.

81. See *Examination Statistics*, *supra* note 12.

82. See *infra* Section I.B.

83. XIANGGANG JIBEN FA art. 2 (H.K.).

84. XIANGGANG JIBEN FA art. 106 (H.K.).

2017] Does “One Belt, One Road” Mean “One Country One System?” 407

A. *Relationship between China and Hong Kong*

On July 1, 1997, “China resumed sovereignty over Hong Kong” after “156 years of British colonial rule.”⁸⁵ The Chinese and British governments signed a Joint Declaration on December 19, 1984, in which Britain agreed to hand Hong Kong back to China, allowing it to regain sovereignty over the region.⁸⁶ “Upholding national unity and territorial integrity along with maintaining the prosperity and stability of Hong Kong,” China, upon resuming sovereignty, designated Hong Kong as a “Special Administrative Region.”⁸⁷ Article 31 of the Constitution of the People’s Republic of China grants the power to create a special administrative region.⁸⁸ “Under the principle of ‘one country, two systems,’ the socialist system and policies [shall] not be practised in Hong Kong,” and the “capitalist system and way of life shall remain unchanged for 50 years” from the handover date.⁸⁹ The idea was an experiment by Deng Xiaoping that has now also been applied to Macau (but with no durational period) and was seen as a method to someday also apply to Taiwan as encouragement to return to China.⁹⁰

The establishment of the Basic Law in Hong Kong within the “one country, two systems” idea has generated much controversy over whether it actually grants rights and freedoms as part of China’s promise to leave Hong Kong unchanged for 50 years.⁹¹ These concerns are characterized by feuds between Mainland Chinese and Hong Kong Chinese that have been

85. Edward A. Gargan, *China Resumes Control of Hong Kong, Concluding 156 Years of British Rule*, N.Y. TIMES (July 1, 1997), available at <http://www.nytimes.com/learning/general/onthisday/big/0630.html#article> (last visited May 17, 2017).

86. XIANGGANG JIBEN FA pmb. (H.K.).

87. *Id.*

88. XIANFA art. 31, (1982) (China).

89. XIANGGANG JIBEN FA prbl, art. 5 (H.K.).

90. Michael Forsythe, *Protests in Hong Kong Have Roots in China’s ‘Two Systems’*, N.Y. TIMES (Sept. 29, 2014), available at http://www.nytimes.com/2014/09/30/world/asia/the-hong-kong-protests-what-you-should-know.html?_r=0 (last visited May 22, 2017); see also Jeffie Lam, *Xi Jinping Tells Macau to Stick to ‘One Country, Two Systems’ in Veiled Swipe at Hong Kong*, S. CHINA MORNING POST (Dec. 20, 2014), available at <http://www.scmp.com/news/hong-kong/article/1666564/xi-jinping-warns-macau-against-misguided-thinking-subtle-swipe-hong> (last visited May 25, 2017).

91. See Euan McKirdy, *‘One Country, Two Systems’: How Hong Kong Remains Distinct from China*, CNN (Sept. 30, 2014), available at <http://www.cnn.com/2014/09/29/world/asia/hong-kong-protest-background/> (last visited May 22, 2017).

prominent in the news.⁹² One specific feud was based on the prominence of Mainland Chinese women coming into Hong Kong to have babies to gain residency rights.⁹³ This blurred the line between Hong Kong citizens and Mainland Chinese citizens, since there was a huge influx of new immigrants from China into Hong Kong.⁹⁴ Besides, some Hong Kong citizens felt that China ignored the promise of autonomy and separation.⁹⁵ The Hong Kong citizens then placed an advertisement in a newspaper calling Mainland Chinese people “locusts.”⁹⁶ The response from China was not direct, but a Peking University Professor, Kong Qingdong, made a public response that Hong Kong citizens were “bastards” and “running dogs of the British Government.”⁹⁷

These situations exemplify the immense division between citizens of China and Hong Kong.⁹⁸ Article 2 of the Basic Law states “[t]he National People’s Congress authorizes the Hong Kong Special Administrative Region to exercise a *high degree of autonomy* and enjoy executive, legislative and independent judicial power.”⁹⁹ The underlying feeling is that this right has been slowly eroded, and China will eventually completely take this right away as evidenced by numerous actions used by China to override the Basic Law and interpret it in a manner that fits its own agenda.¹⁰⁰ An example of China’s practice that caused the “umbrella revolution” protests is the expansion of Basic Law article 45, ratified in 1990.¹⁰¹ Article 45 provides that Hong Kong’s Chief Executive will “eventually be chosen ‘by universal suffrage upon nomination by a *broadly representative nominating*

92. See generally George Chen, Alvin Y.H. Cheung, Sebastian Veg & Ho-Fung Hung, *Has China’s ‘One Country, Two Systems’ Experiment Failed?*, CHINAFILE (June 17, 2015), available at <https://www.chinafile.com/conversation/has-chinas-one-country-two-systems-experiment-failed> (last visited May 22, 2017).

93. *Hong Kong Advert Calls Chinese Mainlanders ‘Locusts’*, BBC NEWS (Feb. 1, 2012), available at <http://www.bbc.com/news/world-asia-china-16828134> (last visited at May 22, 2017).

94. *Id.*

95. Forsythe, *supra* note 90.

96. *Locusts*, *supra* note 93.

97. *Id.*

98. See Chen et al., *supra* note 92.

99. XIANGGANG JIBEN FA art. 2 (H.K.) (emphasis added).

100. See Chen et al., *supra* note 92.

101. Forsythe, *supra* note 90; see also Rishi Iyengar, *6 Questions You Might Have About Hong Kong’s Umbrella Revolution*, TIME (Oct. 5, 2014), available at <http://time.com/3471366/hong-kong-umbrella-revolution-occupy-central-democracy-explainer-6-questions/> (last visited Jun. 16, 2017) (The term ‘umbrella revolution’ was coined through the use of umbrellas by Hong Kong students protesting for more political freedom to protect themselves from police pepper spray).

2017] Does “One Belt, One Road” Mean “One Country One System?” 409

committee in accordance with democratic procedures” (emphasis added).¹⁰² “In 2007, the People’s Congress ruled that in 2017, the [C]hief [E]xecutive could be chosen by universal suffrage – one person, one vote.”¹⁰³ However, on August 31, 2014, China’s National People’s Congress Standing Committee (NPC), the de facto legislative body of the People’s Republic of China, “ruled that to appear on the ballot, candidates had to get more than half the votes of the nominating committee.”¹⁰⁴ The nominating committee is comprised of 800 members selected evenly from four sectors of Hong Kong’s population.¹⁰⁵ These four sectors include: (1) professionals sector; (2) commercial and financial sector; (3) elected members of government sector; and (4) labor, social services, religious and other sectors.¹⁰⁶ The amendment by the NPC was a complete change from the original promise, since it does not satisfy the promise of universal suffrage to elect the next Chief Executive.¹⁰⁷ Hong Kong citizens believed each person had one vote towards electing any candidate running for the Chief Executive.¹⁰⁸ However, this nominating committee preselected the candidates and the public felt that a majority of the committee members strongly affiliated with the NPC influenced the candidates’ chosen.¹⁰⁹

The current socio-political environment, as described above, begins with the NPC having the power of interpretation of the Basic Law under Article 158.¹¹⁰ In response to the issue of universal suffrage in electing the Chief Executive of HKSAR, the NPC released a set of white papers to explain their stance on what “one country, two systems” means and the authority of the NPC to interpret the Basic Law.¹¹¹ The paper explained that “‘one country, two systems’ is a holistic concept.”¹¹² Furthermore, “the high degree of autonomy of HKSAR is subject to the level of the

102. *Id.* (emphasis added) (quoting XIANGGANG JIBEN FA art. 45 (H.K.)).

103. Forsythe, *supra* note 90.

104. *Id.*

105. *See* XIANGGANG JIBEN FA annex I (H.K.).

106. *Id.*

107. *See* Forsythe, *supra* note 90.

108. *Id.*

109. *Id.*

110. XIANGGANG JIBEN FA art. 158 (H.K.).

111. Yiguoliangzhi “Zai Xianggang Tebie Xingzhengqu De Shijian” Baipishu (Yingwen) (“一国两制”在香港特别行政区的实践”白皮书(英) [The Practice of the “One Country Two Systems” Policy in the Hong Kong Special Administrative Region] (promulgated by the Information Office of the State Council of the People’s Republic of China, June 10, 2014, effective June 10, 2014) ST. COUNCIL GAZ. (June 10, 2014) [hereinafter White Papers].

112. *Id.*

central leadership's authorization."¹¹³ "The 'one country' is the premise and basis of the 'two systems,' and the 'two systems' is subordinate to and derived from 'one country.'"¹¹⁴ In order for Hong Kong to "enjoy a high degree of autonomy . . . it must fully respect the socialist system practiced on the mainland in keeping with the 'one country' principle and, in particular, the political system and other systems and principles in practice."¹¹⁵ Therefore, autonomy is granted to Hong Kong but falls under "the four cardinal principles" of China's ideology: "1. We must keep to the socialist road[;] 2. [w]e must uphold the dictatorship of the proletariat[;] 3. [w]e must uphold the leadership of the Communist Party[; and] 4. [w]e must uphold Marxism-Leninism and Mao Zedong Thought."¹¹⁶ These are fundamental underpinnings to China's Government;¹¹⁷ therefore, any desire for autonomy in Hong Kong will be restricted by it. This interpretation of the Basic Law restricts Hong Kong's autonomy and has led to a great disdain for the Chinese Government.

The general opinion of Hong Kong citizens is that China's interpretation of the Basic Law has deprived them of the autonomy originally promised and that China heavily influences the decisions of the HKSAR government.¹¹⁸ Therefore, any new policy proposals from the HKSAR Government should avoid the appearance of dictation by the NPC to prevent any further protests and disharmony among the citizenry.

B. Higher -Level Education in Hong Kong

"There are eight degree-awarding institutions funded by the University Grants Committee (UGC)."¹¹⁹ "The UGC [of Hong Kong] is a non-statutory advisory committee responsible for advising the [HKSAR Government] on the development and funding needs of its funded universities."¹²⁰ "The main function of the UGC is to allocate funding to

113. *Id.*

114. *Id.*

115. *Id.*

116. JIANFU CHEN, *supra* note 57, at 98, quoting SELECTED WORKS OF DENG XIAOPING (1938-1965) 172 (2006).

117. JIANFU CHEN, *supra* note 57, at 98.

118. See Huileng Tan, *Hong Kong's LegCo Election has Record Voter Turnout Amid Fears Over China's Influence*, CNBC (Sep. 4, 2016), available at <http://www.cnbc.com/2016/09/04/hong-kongs-legco-election-has-record-voter-turnout-amid-fears-over-chinas-influence.html> (last visited May 22, 2017).

119. *Post-Secondary Education: Overview*, EDUCATION BUREAU (Jan. 21, 2013), available at <http://www.edb.gov.hk/en/edu-system/postsecondary/index.html> (last visited May 22, 2017).

120. *What is the University Grants Committee (UGC)?*, U. GRANTS COMMITTEE (Jan. 13, 2017), available at <http://www.ugc.hk/eng/ugc/faq/q101.html> (last visited May 22, 2017).

2017] Does “One Belt, One Road” Mean “One County One System?” 411

its funded institutions, and to offer impartial and respected expert advice to the Government on the strategic development and resource requirements of higher education in Hong Kong.”¹²¹ “Specifically, the [UGC] has to determine precise grant recommendations . . . the number [of students] by level of study and year to meet community needs as agreed with the Government, [and] the breakdown of these numbers between institutions, as agreed in principle by the institutions.”¹²² The total number of first-year student placements is approximately 15,000 in either: City University of Hong Kong, Hong Kong Baptist University, Lingnan University, The Chinese University of Hong Kong, The Hong Kong Institute of Education, The Hong Kong Polytechnic University, The Hong Kong University of Science and Technology and The University of Hong Kong.¹²³

“As one of the world’s most competitive cities, Hong Kong is home to some of Asia Pacific’s best universities in terms of teaching and research achievements.”¹²⁴

According to the QS Asia University Rankings 2010, among the eight institutions funded by the UGC, three institutions, The University of Hong Kong (first place), The Hong Kong University of Science and Technology (second) and The Chinese University of Hong Kong (fourth) are in the top five in Asia and in the top 50 in the world. Another two institutions, City University of Hong Kong and the Hong Kong Polytechnic University, are also within the top 200 in the world.¹²⁵

Prospective “students with Hong Kong Diploma of Secondary Education (HKDSE) results” will apply to these institutions through the Joint University Programmes Admission System (JUPAS).¹²⁶ The JUPAS system “is a scheme and the main route of application for . . . students with [HKDSE] results.”¹²⁷ Based on the 2015 HKDSE results, 72,859 students took the exam and of that number 35.4% (25,782 students) passed, granting them eligibility to be accepted into the UGC universities.¹²⁸ The passage rate shows that this exam is a significant barrier of entry to

121. *Role and Functions*, U. GRANTS COMMITTEE (Apr. 3, 2007), available at <http://www.ugc.edu.hk/eng/ugc/about/overview/roles.htm> (last visited May 22, 2017).

122. *Id.*

123. EDUCATION BUREAU, *supra* note 119.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Introduction*, JUPAS, available at <http://www.jupas.edu.hk/en/about-jupas/introduction/> (last visited Mar. 27, 2017).

128. *Examination Statistics*, *supra* note 12.

universities. However, of the 25,782 students in Hong Kong, only 17,309 were able to gain a placement at one of these institutions in 2015.¹²⁹ Therefore, of all highly qualified students, over 30 percent were unable to gain a placement in a university that is funded by the HKSAR government.¹³⁰ If we look at the bigger picture of the entire testing and acceptance system, of the 72,859 students who took the HKSDE with hopes of going to university, only 23 percent of them were able to gain a placement.¹³¹ Given the system and percentage of students who are unable to gain entrance into universities, there is need for reform of the university acceptance system or more funding and expansion to accommodate qualified students.

C. Impact of Basic Law on OBOR Education Scholarship Proposal

As discussed above, Article 2 of the Basic Law grants Hong Kong “a high degree of autonomy. . .”¹³² The current proposal to invest \$HK1 billion into a scholarship fund for international students from the OBOR to promote “people-to-people” ties is a mirror image of the overall agenda set by China under their own OBOR program.¹³³ It is not surprising that the scholarship proposal follows China’s guidelines, since the OBOR is a project that requires cooperation between countries in order to be successful. However, China refuses to mandate any multilateral agreement between all countries involved with the OBOR and relies exclusively on non-binding bilateral agreements.¹³⁴ Therefore, there is no mandatory requirement for Hong Kong to follow the ideology of the OBOR program regarding “people-to-people” bonding even if Hong Kong decides to be a part of the OBOR itself.¹³⁵

Following this analysis, does the educational scholarship program for international students result from an autonomous decision from the Chief Executive? In an attempt to answer this question, this paper must first

129. Statistics Home, U. GRANTS COMMITTEE, available at <http://cdcf.ugc.edu.hk/cdcf/searchStatSiteReport.do#> (To access this source, under “Type of Statistical Table” select “01-Key Statistics on UGC-funded Institutions (5 years)”); then under “Academic Year” select “2011/12 - 2015/16”; then retrieve table through pdf icon) (last visited May 22, 2017) (compiling data by taking all placements granted to first year applicants through the system).

130. See *id.* (The difference between the 17,309 students who gained a place and the 25,782 eligible students divided by the 25,782 eligible students).

131. *Examination Statistics*, *supra* note 12; U. GRANTS COMMITTEE, *supra* note 129.

132. XIANGGANG JIBEN FA art. 2 (H.K.).

133. Policy Address, *supra* note 1; Action Plan, *supra* note 50.

134. See KENNEDY & PARKER, *supra* note 5.

135. *Id.*

2017] Does “One Belt, One Road” Mean “One Country One System?” 413

explain the rationale behind why the Chief Executive implicitly holds the power to make this decision. Under the Basic Law Article 64, the HKSAR Government and the Chief Executive have to “obtain approval from the Council for taxation and public expenditure.”¹³⁶ However, there is an exception to this rule promulgated by Article 50 that states, “[if] the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council.”¹³⁷ Furthermore, “[if] appropriation of public funds cannot be approved because the Legislative Council has already been dissolved, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year.”¹³⁸ Therefore, when the Chief Executive proposes any bill to the Legislative Council for approval, the ability for the Legislative Council to procedurally bar passage of the bill is non-existent. Procedurally, with this power, the Chief Executive can introduce and pass policies by himself, and this could be an abuse of power if the policy at hand is extremely important to him. Additionally, procedure does not account for the political and public backlash that the Chief Executive would suffer from if he abuses this power.

This paper cannot definitively answer the original question posed. But the evidence before us shows: (1) the “people-to-people” program is a fundamental portion of China’s OBOR plan due to the need for bilateral agreements between the countries involved;¹³⁹ (2) the benefits of being a part of the OBOR for Hong Kong are through its ability to provide a multitude of services and its potential for economic growth, yet none of these benefits will come directly from providing an international educational scholarship program;¹⁴⁰ and (3) there is persistent disagreement between China and Hong Kong, that in some expert’s opinions, show that the “one country, two systems” is not working.¹⁴¹ Therefore, following the OBOR proposals will aid China’s goal and might help to diffuse tension from China’s perspective.¹⁴²

136. XIANGGANG JIBEN FA art. 64 (H.K.).

137. *Id.* art. 50.

138. *Id.* art. 51.

139. See KENNEDY & PARKER, *supra* note 5.

140. *Id.*; Policy Address, *supra* note 1.

141. See Chen et al., *supra* note 92.

142. *Id.*

Under the sense of autonomy in Article 2 of the Basic Law, Hong Kong makes its own policy-related decisions.¹⁴³ However, under Article 48 of the Basic Law, the Chief Executive's responsibilities are "to decide on government policies" and to "implement the directives issued by the Central People's Government."¹⁴⁴ Articles 2 and 48 of the Basic Law contradict each other regarding the role China can play in influencing HKSAR Government policies. Under Article 2, China has granted Hong Kong autonomy in its political decisions, but Article 48 mandates the Chief Executive to follow orders issued by China.¹⁴⁵ Regardless, the Chief Executive can decide to pursue an international educational scholarship if he and the HKSAR Government believe that the policy is beneficial to the citizens of Hong Kong.¹⁴⁶ In this respect, despite the negative undertones of China's influence on this policy and the Chief Executive's own personal gain of support from China in his upcoming re-election campaign,¹⁴⁷ it is not adequate to say that the Chief Executive violated the Basic Law under Article 2.¹⁴⁸ Rather, he could have been acting under his responsibilities established by Article 48, to follow a directive issued from China.¹⁴⁹ Given the possible interpretations of the Chief Executive's actions and China's NPC holding the final authority of interpretation of the Basic Law under Article 158, it is most likely that any decision implementing an international scholarship will be deemed within the purview of the Chief Executive's responsibilities.

With regards to Basic Law, Article 106 states that "[t]he Hong Kong Special Administrative Region shall have independent finances . . . [and] shall use its financial revenues exclusively for its own purposes, and . . . shall not be handed over to the Central People's Government."¹⁵⁰ Superficially, the use of finances to set up an international scholarship program may not be for its own purpose. Nonetheless, this is dependent on the interpretation of "own purposes,"¹⁵¹ since this could require that the expenditure be shared among the citizens of Hong Kong. Under this interpretation, funding an international scholarship program for non-citizens is an outside purpose and violates the Basic Law. Alternatively, if

143. XIANGGANG JIBEN FA art. 2 (H.K.).

144. XIANGGANG JIBEN FA art. 48 (4) (8) (H.K.).

145. *Id.*

146. XIANGGANG JIBEN FA art. 48 (4), 49 (H.K.).

147. Ng et al., *supra* note 71.

148. XIANGGANG JIBEN FA art. 2 (H.K.).

149. *See id.* art. 48.

150. *Id.* art. 106.

151. *Id.*

2017] Does “One Belt, One Road” Mean “One County One System?” 415

“own purposes”¹⁵² is taken more expansively to include any expenditure that the HKSAR decides is what they want to spend on independently, then it would not be a violation to the Basic Law.

The second portion of Article 106 demands that finances “not be handed over to the Central People’s Government.”¹⁵³ If China initiated the OBOR program through the HKSAR Government, the NPC would be using HKSAR funds to establish an international scholarship program. This would violate Article 106 because the NPC is not allowed to touch the finances of the HKSAR Government.¹⁵⁴ However, the Chief Executive, under Article 48, has to follow the directives issued by China.¹⁵⁵ Regardless, if the Chief Executive were to follow a directive from China to pursue this international scholarship program, it would be a violation of Article 106.¹⁵⁶ However, China could have simply directed the Chief Executive to participate in the OBOR program as if the international scholarship program was an individual decision made by the Chief Executive. It is not known whether a directive was issued by China to the Chief Executive given that the NPC operates with a lack of transparency.

Regardless of all the possible scenarios, there is no way of knowing with certainty how, or why, the Chief Executive decided to pursue an international scholarship program; or, how to predict how the NPC will use its authority to interpret the Basic Law in this situation. As discussed earlier, Article 158 of the Basic Law, along with the NPC interpretation of this power, grants the Chinese Government great deference to expand its authority over Hong Kong when necessary.¹⁵⁷

Given the uncertainty of how China would choose to interpret the Basic Law,¹⁵⁸ and the insufficient evidence of the purpose behind the international scholarship proposal, it is difficult to determine whether the Chief Executive violated the Basic Law. There are still substantial questions behind the reasoning of the Chief Executive in establishing an international scholarship program. Therefore, to validate or disapprove the policy it is necessary to examine the benefits and issues behind the policy.

152. *Id.*

153. *Id.*

154. *Id.*

155. XIANGGANG JIBEN FA art. 48 § 8 (H.K.).

156. *Id.* art. 106.

157. XIANGGANG JIBEN FA art. 158 (H.K.); *see infra* Part II.A.

158. *See* Forsythe, *supra* note 90.

D. Benefits and Issues with OBOR and International Scholarship Program

The first major issue with initiating the scholarship program is the political and public unrest it caused, given the over-arching sentiment that China strongly influenced the policy.¹⁵⁹ The protests aimed at China changing their interpretation for international suffrage rights to vote for the Chief Executive in 2017¹⁶⁰ have made relations tense with China, and any official plan that leads the public to feel that China has influenced the decision will be met by opposition. The establishment of a \$1 billion international scholarship fund and the guidelines that China laid out in its OBOR proposals make it seem as if the Chief Executive simply followed orders received from China to implement this plan.¹⁶¹ Given the issues that could arise in this situation, it is important to examine the status of Hong Kong's economy and how much the OBOR and the educational program would impact it.

Hong Kong was the 3rd best country for business in 2016.¹⁶² It also ranks first in trade freedom and third in investor protection, which explains why it is seen as a premier financial market in the world.¹⁶³ "Hong Kong [possesses] a free market economy [that is] highly dependent on international trade and finance," significantly related to China.¹⁶⁴ In this light, it would be easy to make the analogy that Hong Kong is significantly dependent on China for economic stability, but analysts have argued the opposing viewpoint that China is actually heavily dependent on Hong Kong.¹⁶⁵ According to the Chinese Ministry of Commerce, China's foreign direct investment ("FDI") "inflow in 2013 amounted to US\$117.6 billion."¹⁶⁶ Hong Kong accounted for US\$78.3 billion of that amount and was "the single largest source of the FDI . . . more than double the amount from the rest of the top [ten] countries . . . combined."¹⁶⁷ During the first

159. See *supra* Section II.C.

160. Forsythe, *supra* note 90.

161. See Policy Address, *supra* note 1; see also *infra* Section II.

162. 2016 *Rankings in Best Countries for Business*, FORBES (Dec. 2016), available at <http://www.forbes.com/places/hong-kong/> (last visited May 22, 2017).

163. *Id.*

164. *Id.*

165. See Frank Chen, *Why China Still Needs Hong Kong*, EJINSIGHT (Oct. 13, 2014), available at <http://www.ejinsight.com/20141013-why-china-still-needs-hong-kong/> (last visited May 22, 2017).

166. *Id.*

167. *Id.* (Hong Kong's FDI was more than double the amount of the rest of the top ten countries combined, these nations are Singapore, Japan, Taiwan, United States, South Korea, Germany, Netherlands, United Kingdom and France).

2017] Does “One Belt, One Road” Mean “One County One System?” 417

seven months in 2014, “FDI flow from Hong Kong amounted to US\$49.4 billion, representing almost 70 percent of China’s total [FDI income] for the period.”¹⁶⁸

“In terms of trade . . . Hong Kong’s virtue as a free trade hub [is] a boon to millions of Chinese exporters.”¹⁶⁹ Generally, goods can be exported from China to Hong Kong “and then transshipped to the destination market in the name of re-export so as to avert [trade] barriers.”¹⁷⁰ “[T]he re-export volume via Hong Kong in 2012 was US\$44.6 billion.”¹⁷¹ Hong Kong is also the “ideal place for Chinese companies to raise capital. IPO funds raised by the Hong Kong Stock Exchange last year totaled ... (US\$21.46 billion), making the territory the world’s second-largest IPO market.”¹⁷²

Given the economic stability of the Hong Kong economy, there is less of a necessity for Hong Kong to become a part of the OBOR, let alone set up an international scholarship program and invest HK\$1 billion of its own funds into the project. One of the listed benefits is that the OBOR would allow Hong Kong to capitalize in new markets that emerge from the infrastructure growth made possible by the program.¹⁷³ However, Hong Kong does not have a pressing need for infrastructure development, and would not benefit directly from the loans and development plans that China has for developing countries on the OBOR.¹⁷⁴ China will actually need Hong Kong to remain in its current role as an established financial market if it wishes to receive outside investment and continued FDI income.¹⁷⁵ Therefore, it is important to China that Hong Kong becomes a part of the OBOR program.

Since Hong Kong’s economy is significantly tied to foreign investment and China is a major part of this, it would make sense to follow on the OBOR trail to ensure continued cooperation with China. One issue is the unpredictability of the OBOR. With major investments into developing countries that have weak or corrupt governance, it would be risky for Hong Kong to use its own financial market to supplement this

168. *Id.*

169. *Id.*

170. Chen, *supra* note 165.

171. *Id.*

172. *Id.*

173. See Policy Address, *supra* note 1, ¶ 41.

174. See Elena Holodny, *The 11 Countries with the Best Infrastructure Around the World*, Business Insider (Oct. 2, 2015), available at <http://www.businessinsider.com/wef-countries-best-infrastructure-world-2015-9/#11-united-states-1>. (last visited Jun. 16, 2017).

175. Chen, *supra* note 165.

endeavor.¹⁷⁶ China's financial market lacks transparency and there is no market efficiency since not all information is available to the public to make reasonable judgments to trade.¹⁷⁷ Therefore, any unaccountable changes in the Chinese market, that the Central Government will have safeguards against, will now become information that will impact the Hong Kong Stock Market negatively.¹⁷⁸ Exposing a well-established market in Hong Kong to an OBOR program might have more of a negative outcome for the Hong Kong economy than the grandiose promises made by the Chief Executive during his policy address.¹⁷⁹

Assuming that, despite the risk involved, participating in OBOR is worthwhile for Hong Kong, the initial task of establishing an international scholarship program to attract students to attend universities funded by the HKSAR government is an investment that is still troubling to accept.¹⁸⁰ The current acceptance rate for all students in Hong Kong to get a placement at one of the UGC universities is at 23%,¹⁸¹ meaning that a significant proportion of the next generation of Hong Kong citizens will not receive a higher education. This has severe repercussions on the economy in the long run, as there is a possibility that Hong Kong will lose educated workers in the highly developed and service industry-focused job market. A large number of students attend universities abroad, but this only amounts to around five percent of the total number of students each year who graduate from high school.¹⁸² Middle-class families that can afford to send their children abroad generally represent this group, since tuition is substantially greater and unaffordable for lower income families.¹⁸³ The impact on students from lower income families is therefore even more substantial when there are no alternative options for them to gain a high-level university degree if not accepted through the ultra-competitive system in Hong Kong.

176. See Schuman, *supra* note 36.

177. See Kenneth Kim, *What's Going on with China's Stock Markets and Economy?*, FORBES (Jan. 18, 2016), available at <https://www.forbes.com/sites/kennethkim/2016/01/18/whats-going-on-with-chinas-stock-markets-and-economy/3/#3331f5fc55af> (last visited May 22, 2017).

178. See *id.*

179. See Policy Address, *supra* note 1, ¶¶ 38-41.

180. See *supra* Part. II.B.

181. *Examination Statistics*, *supra* note 12; U. GRANTS COMMITTEE, *supra* note 129.

182. Hazel Knowles, *Focus HK: The Brain Drain*, CHINA DAILY (Feb. 21, 2014), available at http://archive2017.chinadailyasia.com/focus/2014-02/21/content_15119843.html (last visited May 22, 2017).

183. Casey Kwong Chun Leung, *Reasons for Hong Kong Parents Sending Their Children Abroad for Secondary Education*, vii (Feb. 2013) (unpublished doctoral thesis, University of Technology, Sydney) (on file with the University of Technology, Sydney Library system).

2017] Does “One Belt, One Road” Mean “One County One System?” 419

It is safe to assume that there is a need for more placements for Hong Kong citizens within universities in Hong Kong. There are two ways to implement the proposed international scholarship fund for OBOR students. First, government officials could keep the current cap for the number of students accepted into universities and eliminate spots for Hong Kong students to make way for the international student to attend the university in their place. Second, they could invest funding into the universities to expand enrollment specifically for these international students, and this will have no impact on the number of Hong Kong students accepted each year into universities.

Either policy would be unpopular for Hong Kong citizens. In the first proposal, a HK\$1 billion investment of government funds would go to eliminate university placements for children of taxpayers in order to allow non-taxpayers to receive the benefit instead. The issue here returns to the discussion of whether this proposal violates the Basic Law Article 106 that any expenditure by the HKSAR government has to be for its “own purposes.”¹⁸⁴ Here, regardless of the definition of “own purposes,” this proposal would not validate an expenditure that would negatively impact its own citizens for the benefit of a foreigner. I do not believe that the HKSAR would implement this option given the additional public backlash it would receive. Additionally, the funds from the HK\$1 billion investment could be put to better use.

In the second proposal, the HK\$1 billion investment would be used to expand the placements that a university could accept specifically for international students. The issue here is the same as before, given the limited placements already available for Hong Kong citizens to obtain a university degree. It would be a tough sell to Hong Kong citizens that the HKSAR Government would invest such a large amount of money to aid international students in gaining that same education without providing its own citizens the same benefit.

Putting aside the fairness aspect at issue of funding international students over Hong Kong citizens for a moment, one of the reasons for attracting international students is to improve the quality of the education given at the universities.¹⁸⁵ The universities in Hong Kong are already among the best in the world,¹⁸⁶ but there is a potential benefit to further improve this educational experience with the establishment of an international scholarship program and improving diversity on campuses.

184. XIANGGANG JIBEN FA art. 106 (H.K.).

185. Policy Address, *supra* note 1.

186. See EDUCATION BUREAU, *supra* note 119.

A study showed that socializing across racial lines and participating in discussions of racial issues are associated with “widespread beneficial effects on a student’s” academic and personal development, irrespective of race.¹⁸⁷ Specifically, socializing with someone of a different racial group or discussing racial issues contribute to the student’s academic development, satisfaction with college, level of “cultural awareness, and commitment to promoting racial understanding.”¹⁸⁸ A diverse student body also has proven to have positive impacts on student retention, overall college satisfaction, college GPA, intellectual self-confidence and social self-confidence.¹⁸⁹

Additionally, the impact of globalization makes it important to equalize educational experiences around the world, a problem that a multicultural education can help solve.¹⁹⁰ There might be an alternative argument that bringing in more international students would affect the quality of education provided at universities in Hong Kong. This problem could arise if the students accepted through the OBOR program are not as qualified, but are guaranteed a spot because of the scholarship. This would take away opportunities for more qualified local students and in turn lower the quality of education. However, overwhelming evidence and studies¹⁹¹ show that diversifying the student population and increasing the number of different experiences create a better sense of the world. Despite benefits to the education system for current students by implementing an international scholarship program, there is still an underlying problem with domestic enrollment and opportunities that needs to be addressed.

Finally, the purpose of an educational program is to create “people-to-people” ties that would benefit the OBOR program.¹⁹² More specifically, China would want to educate other countries on its principles of morality and virtue to strengthen these bonds.¹⁹³ Given the established displeasure and disdain for China among Hong Kong citizens,¹⁹⁴ there is

187. See Alexander W. Astin, *Diversity and Multiculturalism on the Campus: How Are Students Affected?*, 25 *CHANGE* 44, 48 (1993); Octavio Villalpando, *Comparing the Effects of Multiculturalism and Diversity on Minority and White Student’s Satisfaction with College* 24 (Nov. 9, 1994) (unpublished paper from the ASHE annual meeting), available at <http://files.eric.ed.gov/fulltext/ED375721.pdf> (last visited May 22, 2017).

188. Astin, *supra* note 187, at 47.

189. *Id.*

190. See SONIA NIETO, *AFFIRMING DIVERSITY: THE SOCIOPOLITICAL CONTEXT OF MULTICULTURAL EDUCATION* (1992).

191. See Astin, *supra* note 187; Villalpando, *supra* note 187; NIETO, *supra* note 190.

192. See *supra* Section I.B.

193. *Id.*

194. See *supra* Section II.A.

2017] Does “One Belt, One Road” Mean “One Country One System?” 421

real doubt whether an educational program based in Hong Kong would actually provide the benefits China expects. There is a greater chance that an educational program in Hong Kong would weaken “people-to-people” ties with other OBOR country students given the relationship between Hong Kong and China. However, it would strengthen Hong Kong’s relationships with other OBOR countries.

Overall, the OBOR is a tenuous program that has significant issues with its own feasibility. It is difficult to justify a large financial investment by the HKSAR to promote the program. An international educational scholarship ignores the current issues students in Hong Kong are facing. Furthermore, the program could have a further impact on the availability of university placements and lead to greater problems in the future.

E. Conclusion

The proposed international scholarship for OBOR country students of HK\$1 billion faces controversy in terms of whether it violates Basic Law Articles 2 and 106.¹⁹⁵ Given the Chief Executive’s mandate to follow directives from China, and China’s propensity to use Article 158¹⁹⁶ to interpret any part of the Basic Law that seems to favor its own agenda,¹⁹⁷ it will be difficult to dismiss the proposal as a Basic Law violation.

When evaluating Hong Kong’s proposed involvement in the OBOR on its own, and more specifically the international scholarship, the estimated benefits do not seem to address the issues at hand or those that would arise from implementing the program. There is a reasonable rationale for Hong Kong to be a part of the OBOR outside of the scholarship investment based on the economic relation between it and China. However, the risk involved needs to be assessed thoroughly to make that decision rather than simply accepting a wide-sweeping proposal issued by the Chief Executive.

III. RECOMMENDATIONS

It is a rather simple assertion to make that it is non-beneficial for Hong Kong to be a part of the OBOR given the amount of risk exposure.¹⁹⁸ The greater issue is maintaining a balanced relationship with China under the “one country, two systems” that has been boiling over with certain

195. See XIANGGANG JIBEN FA arts. 2, 106 (H.K.); see *supra* Section II.C.

196. See XIANGGANG JIBEN FA arts. 48, 158 (H.K.).

197. See Forsythe, *supra* note 90.

198. See *supra* Section II.D.

issues over the past few years.¹⁹⁹ Focusing on the specific international scholarship proposal, it brings to light the underlying issue that the younger generation faces with the limited number of university placements.²⁰⁰ I will attempt to separate the two issues here and propose some solutions to the problems.

A. Hong Kong – China Relations

The relationship between Hong Kong and China will not be resolved amicably anytime soon. China has begun to impose its favored educational policies slowly on the culture in Hong Kong. Small changes in Hong Kong, such as the broadcast of the Chinese National Anthem each day on television and the subsequent changing in sequence to prioritize Mandarin over English are subtle changes.²⁰¹ Hong Kong citizens do not notice nor fight against them, but it results in the younger generation accepting this as the norm.²⁰² A great example of this cultural change can be seen in the local television broadcast channels. Televisions Broadcast Limited (“TVB”) is the most popular television channel in Hong Kong.²⁰³ It is part of a monopoly of the airwaves since only two broadcast companies are licensed to broadcast through the free television airwaves in Hong Kong.²⁰⁴ TVB prides itself on its self-produced television series that attract the largest proportion of the Hong Kong viewing public.²⁰⁵ Recently, however, TVB has slowly started to purchase and broadcast television series produced in China instead of its own programs.²⁰⁶ The idea was initially

199. See Forsythe, *supra* note 90.

200. See *supra* Section II.B.

201. Martin Wong, *National Anthem to be Broadcast Before News*, S. CHINA MORNING POST (Oct. 1, 2004), available at <http://www.scmp.com/article/472472/national-anthem-be-broadcast-news> (last visited May 26, 2017); Te-Ping Chen, *Mandarin Overtakes English as Hong Kong's Second Language*, WALL ST. J. (Feb. 24, 2012), available at <https://blogs.wsj.com/chinarealtime/2012/02/24/mandarin-overtakes-english-as-hong-kongs-second-language/> (last visited May 26, 2017).

202. See Te-Ping Chen, *supra* note 201.

203. See *About TVB*, TVB (Jan. 29, 2017), available at <http://corporate.tvb.com/article/675a45c6ece081529ee9151de5c7394b.html> (last visited May 22, 2017); see also Nikki Sun, *TVB Ratings Slip Further as Rival ViuTV Gains Momentum*, S. CHINA MORNING POST (Apr. 19, 2016), available at <http://www.scmp.com/news/hong-kong/article/1936986/tvb-ratings-slip-further-rival-viutv-gains-momentum> (last visited May 26, 2017).

204. See *id.*

205. See *id.*

206. See SC Yeung, *Is TVB Losing Viewers with its Mainland Drama Lineup?*, EJINSIGHT (Jul. 15, 2015), available at <http://www.ejinsight.com/20150715-is-tvb-losing-viewers-with-its-mainland-drama-lineup/> (last visited May 26, 2017).

2017] Does “One Belt, One Road” Mean “One Country One System?” 423

not well received by the Hong Kong viewing public but slowly these programs became more popular.²⁰⁷ It proves that over time, the mindset of the public can be swayed subconsciously and that is the method utilized to achieve cohesion between Hong Kong and China given the “one country, two systems” structure. This systematic indoctrination would probably be the wisest and safest route for China to take with Hong Kong. Since the sovereignty of Hong Kong remains vested in China, and that is not going to change anytime soon, China has all the time in the world to improve its relationship with Hong Kong.

Another recommendation is to allow Hong Kong the full rights as established within the Basic Law and grant the interpretation clause in Article 158 to the judiciary.²⁰⁸ Currently, the courts of the HKSAR have jurisdiction over all cases in the Region but have no jurisdiction over foreign affairs.²⁰⁹ In order for the courts of the Region to answer questions regarding foreign affairs, they must “obtain a certificate from the Chief Executive,” approved by China’s Central People’s Government.²¹⁰ The great irony behind the entire situation is that China wants to leave Hong Kong alone.²¹¹ China needs the capitalist structure for exports, financial markets and FDI,²¹² but China is also unable to allow Hong Kong the complete freedom that comes with a capitalist regime. The mentality is that Hong Kong is already granted much greater autonomy than any other region in China.²¹³ Due to a fear they would lose control over the region, China has to sporadically flex its authoritative muscle, in an effort to prevent Hong Kong from becoming another Taiwan.²¹⁴ Despite these insecurities, China benefits immensely from the established trade zone and financial markets that it has attempted to replicate without success.²¹⁵ China gains nothing by trying to influence Hong Kong over matters that they supposedly deferred to the region. The benefit for China to grant Hong Kong true autonomy is the international goodwill it will receive and

207. *See id.*

208. *See* XIANGGANG JIBEN FA art. 158 (H.K.).

209. *See id.* art. 19.

210. *Id.*

211. *See id.* art. 5.

212. *See* Chen, *supra* note 165.

213. *See* XIANGGANG JIBEN FA art. 5 (H.K.); *see also* Venus Wu, *Top China Official Says Hong Kong’s Autonomy is not a License to Challenge Beijing*, Reuters (May 27, 2017), available at <http://www.reuters.com/article/us-hongkong-china-politics-idUSKBN18N06F> (last visited Jun. 6, 2017).

214. *See* Forsythe, *supra* note 90.

215. *See* Chen, *supra* note 165.

direct access to a respected international trade zone and financial market.²¹⁶

If China does grant Hong Kong true autonomy in deciding its own policies and agenda, then the adoption of the OBOR would be less controversial and it would make more sense for Hong Kong to participate. However, if China is reluctant to consider different voices and opinions in Hong Kong, then the joining of the OBOR will always feel like a decision that was not made for the region. It would have the taste of force and control that has soured the relationship between China and Hong Kong, instead of a willing bilateral agreement that China is seeking with other countries involved in the program.

This recommendation is unlikely to take place, and the most likely scenario is that China will continue to indoctrinate the younger generation of Hong Kong citizens by gradually exposing them to China's culture and belief system. Eventually, China likely hopes this would transform a generation of Hong Kong citizens to support and agree with China's practices. Hong Kong would then be fully immersed into China without the need for the "one country, two systems" structure, but retain the established capitalist market system. On the other hand, China may have already developed a sustainable and profitable market by then.

B. Educational Reform

The issue of a lack of university placements for students in Hong Kong is troubling for the numerous reasons previously stated.²¹⁷ Despite the numerous benefits of an international scholarship program, Hong Kong should first address the needs of its own citizens before implementing any other educational reform. One simple proposal would be to implement the proposed HK\$1 billion investment into the university system to create more placements for local students applying to one of the UGC universities. However, the proposed investment would only create an estimated 100 extra places.²¹⁸ This would have a minimal impact on the number of students affected by the lack of university placements, as there are currently 8,473 students facing this problem.²¹⁹

Following a proposal of injecting funds to solve the issue, it would cost the HKSAR an estimated HK\$84 billion under the assumption that

216. *See id.*

217. *See supra* Sections II.B-C.

218. Policy Address, *supra* note 1, ¶ 62.

219. *See* U. GRANTS COMMITTEE, *supra* note 129 (The difference between the number of eligible students and the number of accepted students).

2017] Does “One Belt, One Road” Mean “One County One System?” 425

HK\$1 billion would increase student placements by 100.²²⁰ The estimated costs would probably be smaller since the incremental costs to expand university services are not exponential. Assuming the creation of a better infrastructure, the universities would be able to take more students without the need for the same amount of investment for the initial 100. However, while all these numbers are theoretical, using investment funds to increase the number of university placements is much more viable for Hong Kong citizens since they will receive a direct benefit.

A more cost-effective solution would create an entirely new university that can cover the number of students who were eligible to be accepted into a university.²²¹ This solution might cost less since expanding an existing system is difficult. There may be issues with design since there is limited space to expand into, the location may be of high value, purchasing extra space to expand could be extremely costly, and reconstruction could take much longer since the existing amenities would still be in use. These were the same issues facing the University of California Regents when they determined there was a lack of placements for students in their long-range enrollment predictions.²²² The decision to create a new University of California campus in Merced was the solution as opposed to expanding existing campuses.²²³

The creation of a new university and integrating it into the existing UGC University system could bypass all these issues. The University of California Regents, when selecting Merced as its new location for expansion, undertook this process.²²⁴ Hong Kong is currently developing into new regions such as Lantau, areas that are possible locations for creating a new university.²²⁵ Another consideration would be shorter construction times since there will be less restrictions than an existing building would present. One potential problem is that Hong Kong is one of the most expensive cities in the world, making any land purchase

220. See *id* (Taking the 8,473 students and dividing by 100 then rounding up).

221. See generally *id*.

222. See *History*, UCMERCED, available at <http://www.ucmerced.edu/history> (last visited Mar. 27, 2017).

223. See generally *id*.

224. See *id*.

225. Tammy Tam, *Lantau Development: The Next Big Chance to Build a New Hong Kong Town*, S. CHINA MORNING POST (Mar. 4, 2016), available at <http://www.scmp.com/news/hong-kong/politics/article/1901971/lantau-development-next-big-chance-build-new-hong-kong-town> (last visited May 22, 2017).

extremely costly.²²⁶ This may have been one of the hurdles that previous educational administrations faced. Despite these concerns, a long-term investment that grants more students access to a university education will lead to larger proportion of the population earning higher incomes.²²⁷ Higher incomes will increase return in tax revenues that could offset these government investment costs eventually.²²⁸ The international scholarship fund would not enjoy the above-stated benefit since any international students will not contribute taxes. Therefore, focusing on reforming the domestic educational system is much more beneficial to Hong Kong than investing in an international scholarship program.

If domestic reform were not financially feasible in any manner, another recommendation would be to flip the international scholarship investment towards Hong Kong citizens instead. Here, the HK\$1 billion dollar investment would subsidize Hong Kong students to go abroad in pursuit of a university education. In order for the investment to balance the government budget, assume that the students receiving the international scholarship will eventually return back to Hong Kong to work and begin their careers. The return on investment will be the same as predicted earlier through increased tax revenue from citizens in higher paying jobs.

The issue with this recommendation is whether there is an adequate supply of foreign placements available for all Hong Kong students wishing to participate. Even if there were an adequate supply, they would face the same competition and possible denial of placements due to more qualified candidates competing for the same placements. However, a possible added benefit for investing in scholarships for university degrees abroad would

226. Alison Millington, *The 10 Most Expensive Cities to Live in Around the World in 2017*, BUSINESS INSIDER (Jan. 23, 2017), available at <http://www.businessinsider.com/the-most-expensive-cities-to-live-in-around-the-world-in-2017-2017-1/#10-bournemouth-and-dorset-uk-the-area-of-bournemouth-and-dorset-was-called-a-severely-unaffordable-market-in-previous-surveys-and-in-2016-had-a-median-multiple-or-median-house-price-divided-by-median-household-income-of-89-it-even-beat-out-the-uks-largest-market-london-which-also-had-a-severely-unaffordable-median-multiple-of-85-and-has-the-worlds-second-worst-housing-bubble-risk-according-to-the-ubs-global-real-estate-bubble-index-1> (last visited May 22, 2017).

227. Johnathan Rothwell, *The Economic Value of Education*, BROOKINGS INST. (Nov. 12, 2013), available at <https://www.brookings.edu/blog/the-avenue/2013/11/12/the-economic-value-of-education> (last visited May 26, 2017).

228. *Hong Kong 2015-16 Tax Facts*, ERNST YOUNG (2016), available at [http://www.ey.com/Publication/vwLUAssets/EY-Hong-Kong-2015-16-Budget-Tax-Facts-en/\\$FILE/EY-Hong-Kong-2015-16-Budget-Tax-Facts-en.pdf](http://www.ey.com/Publication/vwLUAssets/EY-Hong-Kong-2015-16-Budget-Tax-Facts-en/$FILE/EY-Hong-Kong-2015-16-Budget-Tax-Facts-en.pdf) (last visited May 26, 2017) (showcasing Hong Kong has a progressive tax system that taxes higher income more than lower income)..

2017] Does “One Belt, One Road” Mean “One County One System?” 427

be the skill set that comes with international travel and exposure to different cultures.²²⁹ This would be a valuable asset for students who participate in the program to gain prominent careers, given the reliance of Hong Kong’s economy on international trade and markets.²³⁰ This would also improve the attractiveness of doing business in Hong Kong. In a possible reaction to this international scholarship opportunity, the targeted group of students who are unable to obtain placements in the UGC University system might be replaced with the elite students who wish to explore the opportunity to study abroad themselves. This could have the unwanted effect of having a majority of Hong Kong’s top students choosing to study abroad and diminishing the quality of the students and education provided by Hong Kong universities.²³¹ This is an extreme possibility, but the effects in my opinion are overstated. Even if the top students chose to go abroad rather than stay in Hong Kong for their higher-level education pursuit, the discussion here only relates to the outliers of the spectrum and in turn will not affect the average student or the overall educational quality of the universities. The effect may be more pronounced if the job opportunities are skewed to pay more for students who obtained their university degrees from an institution outside of Hong Kong. However, this discussion is outside the scope of this paper and could be the focus for further research.

Finally, my last recommendation is if Hong Kong was adamant about instilling an educational scholarship for OBOR students, then there should be some safety valves built in that will limit the costs and effects on Hong Kong’s students. First, there should be a mandate for all international students who receive the grant to pledge to work in Hong Kong after graduation for a period of no less than two years. The detriment to the international students would be minimal as they would still be paid and get the experiences they need to begin their careers in an international city with numerous opportunities. Hong Kong will be able to recoup a portion of the money granted through the scholarship by the individual income taxes paid while working in Hong Kong. It is worth noting that offering a scholarship to international students would be more financially attainable, since Hong Kong would not have to offer the opportunity to over 7,000 local students if it chose to reform and improve its own educational system instead.²³² Second, there has to be a matching

229. See *supra* Section II.D.

230. See generally Chen, *supra* note 165.

231. Knowles, *supra* note 182.

232. See *supra* Section II.B.

scholarship offered by the OBOR country that is sending its students to Hong Kong to participate, so that a Hong Kong student can receive the same experience. This will help alleviate some of the placement issues for local Hong Kong students without revamping the whole domestic educational system.

All these recommendations will take serious political persuasion and tact to instill, since they are significant reforms to an important public service along with substantial government outlays. However, the long-term benefit would be solving a serious domestic issue that would help improve Hong Kong's economy and gain strong public support unless taxes are raised to cover the costs.