

Hong Kong After 20 Years: the Rollback of Civil, Human, and Legal Rights

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Executive Summary

- **Twenty years on**, the situation in HKSAR looks much bleaker for democracy and political rights than it did only ten years ago.
- **The Communist Party of China** voiced – before the Handover – a preference for the UK to maintain a colonial direct rule system over Hong Kong, seeing any move toward democratic self-governance – as with other British colonies – as harmful to UK-China relations.
- **While British rule did not extend universal suffrage**, it fostered a path to universal suffrage and imbued a number of rights to citizens through the independent judiciary.
- **Hong Kong’s judiciary** has become increasingly politicised as Beijing exerts non-judicial means to enforce its will in the HKSAR. This includes arbitrary detentions, prosecutions for ‘double jeopardy’, and extra-legal extradition.
- **Hong Kong’s economy** has benefitted immensely from the Handover with China as the two economies have grown ever-closer. From a level well below London’s in 1997, Hong Kong’s GDP per capita is now higher.
- **Chinese Red Capital** has come to Hong Kong in three stages: (1) Pre-1997: political and economic infiltration for the purpose of links to the outside world; (2) Post-1997: the build-up of assets of CCP families and their princelings; and (3) Post-Xi: comprehensive investment into the financial, property, and media pillars of Hong Kong.
- **The Moral and National Education curriculum** while intending to foster Chinese nationalism has, in fact, led to a revolt among Hong Kong’s youth.
- **Hong Kong’s place in the Reporters Without Borders’** world press freedom index sank from 18th place in 2002 to 73rd place in 2015.
- **Beijing’s increasing control over arms of governance** in the LegCo and the ExCo have been successful in narrowing access for pro-democracy activists.

Policy Recommendations for the FCO:

- Promote the UK’s commitment to the ‘One Country Two Systems’ principle by engaging directly and more publicly with civil society in Hong Kong.
- Strengthen the position of the institutions central to Hong Kong’s autonomy by engaging more with judges, lawmakers, journalists, media workers and university representatives.
- Sponsor high-profile visits by key Hongkongers to engage with parliamentarians, members of the judiciary, academics, human rights advocates, and others as appropriate.
- Increase capacity and resources within the FCO for monitoring the situation in Hong Kong.

Policy Recommendations for Parliament:

- Form a separate All-Party Parliamentary Group (APPG) on Hong Kong to monitor political as well as economic developments in Hong Kong and call attention to them as and when required.
- Re-launch the aborted 2017 Foreign Affairs Committee Inquiry *UK Relations with China Inquiry*, which represents an opportunity to frame the particulars of the bilateral relationship and host a public conversation on the political trends in Hong Kong.

Foreword

This report comes at a key time in Hong Kong's history. Twenty years after the handover in 1997, we have a Hong Kong which is more-or-less recognisable to those of us who sat on the side lines of the Handover Ceremony. The economy is relatively strong, the skyline has continued to rise and rise, and Hong Kong's culture and people remain dynamic and energetic. And yet... to leave it there would be to leave the picture unfinished. For what we had in 1997 were worries and dreams.

It's a disappointment to me to find that many more of my 1997 worries and fewer of my 1997 dreams have come to pass. The high degree of Hong Kong's autonomy as enshrined in the Sino-British Joint Declaration and Basic Law has been watered down by a mainland China intent on asserting its "comprehensive jurisdiction" over Hong Kong and making it increasingly clear that what little autonomy Hong Kong enjoys is at Beijing's pleasure.

The rule of law, once an integral part of our judiciary, is at risk because of successive interpretations of the Basic Law by the National People's Congress Standing Committee (NPCSC). We have seen at least one Hong Kong book publisher forcibly removed from Hong Kong to the mainland without due process. And the imprisonment of three young activists adds to the growing perception that the Government here is determined to silence political opponents.

On the wider stage, I am deeply concerned not only with China's own trajectory, but the trajectory of its intentions with regards to Hong Kong. We saw in the 19th People's Congress, a leader who seems to hold more power than any since Mao Zedong. For many in Hong Kong and on the mainland, the loss of collective leadership, and the return to one-man power is disturbing. The statement by China's Foreign Ministry that the Joint Declaration is a "historical document that no longer had any practical significance" is one of the worst fears that any of us had, standing there on the podium on that rainy night in July 1997. Will the United Kingdom, as the co-signatory of the Joint Declaration on the future be willing to balance its economic relationship with Beijing with the defence of the freedoms it once imparted to us? Only time will tell.

It has not all been doom and gloom: Hong Kong remains one of the most economically free places in the world; it ranks above Singapore and Switzerland in Heritage's 2016 ranking table. Similarly, the explosion in political activism has surpassed our 1997 expectations. While the Umbrella movement has yet to translate into actual change, it marks a remarkable standing-up of the younger generation, one in which all Hongkongers can feel proud. The regeneration of our common identity has been an unheralded, unexpected surprise. While the current situation has seen their leadership locked up, one might think of other places where this took place and remember that the history of democracy and human rights has been in worse places before and survived.

Hong Kong represents the best face of China with its respect for the rule of law, basic rights and freedoms and toleration of diverse views. We are determined to maintain our strengths but we need the international community to walk with us in facing the challenges ahead.

Anson Chan, GBM, GCMG, CBE, JP
Former Chief Secretary for Administration, Hong Kong SAR
Convenor, Hong Kong 2020

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BL	Basic Law
CGLO	Central Government Liaison Office
CPC	Communist Party of China
CFA	Court of Final Appeals
CPG	Central People's Government
CUHK	City University of Hong Kong
ExCo	Executive Council
FCO	Foreign and Commonwealth Office
GDP	Gross National Product
HK	Hong Kong
HKSAR	Hong Kong Special Administrative Region
JD	Joint Declaration on Hong Kong
JLG	Joint Liaison Group
ICCPR	International Covenant on Civil and Political Rights
ICAC	Independent Commission Against Corruption
IFJ	International Federation of Journalists
IMF	International Monetary Fund
IPO	Initial Public Offering
LegCo	Legislative Council
MFA	Ministry of Foreign Affairs
MNE	Moral and National Education Curriculum
NPC	National People's Congress
NPCSC	National People's Congress Standing Committee
PRC	People's Republic of China
SAR	Special Administrative Region
WTO	World Trade Organization

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Introduction

Dr John Hemmings

Henry Jackson Society

On 14 March 2013, Xi Jinping became President of the People's Republic of China. This week, as I write these words, the 19th National Congress of the Communist Party of China is being held in Beijing. It has, as many Western observers of China predicted, reaffirmed Xi's central place at the apex of the Chinese Communist Party. It is not, for many in China or around it, a happy occasion for it seemingly marks the end of the PRC's era of "collective decision-making", with a slide back toward the one-man rule that characterized the calamitous period of Chairman Mao Zedong. It is certainly not the progressive or modern trajectory that many in the West once hoped would prevail inside China.

The situation for Hong Kong is slightly more nuanced, but grim, nevertheless. While enjoying many more freedoms than citizens of the mainland, a great gap has opened up between what the people of Hong Kong expect from their government, and what the People's Republic of China is willing to provide. In many ways, the slide toward authoritarianism of Xi's China from the hopeful days of the 1990s and early 2000s exasperates these political and social tensions, as Xi walks back on various incremental steps toward a rule-of-law and a nominally independent judiciary. In their place, Xi has implemented a Party-central approach reminiscent of decades past. This regression has become apparent in governance, in politics, in education, and in the media in China. The large-scale street protests of 2014 – the Umbrella Movement – was in many ways, a reaction to attempts by Beijing to implement such changes in Hong Kong.

This report comes off the back of an all-day roundtable in July 2017 marking the 20th anniversary of the Handover, hosted at the Henry Jackson Society with the support of the University of Surrey. The speaker list was an impressive one, representing many Hongkongers and Britons, including Martin Lee, Anson Chan, Sir Malcolm Rifkind, Nathan Law, Edward Leung, Benedict Rogers, Professor Carol Jones, Professor Christopher Hughes, Professor Steve Tsang, Dr Malte Kaeding, among many others. Many of those present at the roundtable on 3 July, were willing to contribute to this volume, which in its modest way, seeks to add to the work of the Foreign and Commonwealth Office's *Six-Monthly Report on Hong Kong*.

The report is divided into eight chapters which attempt to move forward by theme in a time-linear fashion. The first chapter covers negotiations in the period running up to 1997 and was written by **Ambassador Hugh Llewelyn Davies**, the Senior British Representative and Ambassador to *the Sino-UK Joint Liaison Group*. Many of his insights – made at the time – have not been published elsewhere and offer a brief insight into one of the most intense examples of British diplomacy. In the second chapter, **Professor Carol Jones** has written a critical analysis of the rule of law in Hong Kong, and noting how it has changed over the past decade. In chapter three, **John Calverley** provides a comprehensive and tightly written account of Hong Kong's economic situation, charting the successes and growth of the City's economy. His account is followed in chapter four by the closely related essay on Red Money by **Yi Zheng** – looking at the political economy of Hong Kong and how Communist-influenced financing has operated in the SAR.

The fifth chapter – written by the University of Surrey’s **Dr Malte Kaeding** – moves from the PRC’s economic penetration of Hong Kong to its political penetration, with particular reference to patterns of political control and their long-term effects and the role of the Chinese Liaison Office. **Benedict Rogers** – infamous now after he was refused entry into Hong Kong – contributes a stirring overview of Hong Kong’s democratic movement, from an international perspective. The seventh chapter by one of Hong Kong’s most prominent *localists*, **Edward Leung**, charts the rise of Chinese nationalism on the mainland and notes – with interest – why Hong Kong’s citizens have not been persuaded by PRC-driven narratives focusing on humiliation and instead moved toward what has come to be called *localism*. Finally, in chapter eight, we look to the future of political freedom for Hong Kong in a moving chapter contributed by **Nathan Law**. Now, perhaps one of Hong Kong’s most famous sons, his instrumental role in the Umbrella Movement, along with that of Joshua Wong and Alex Chow, has become a part of the City’s history. The fact that Mr Law contributes this chapter from inside jail for infractions for which he has paid twice, serve as the greatest reminder to us here in the UK that these freedoms are real and have meaning for those who are – at this moment – fighting for them.

This report seeks to be a stock check of where Hong Kong is twenty years after the Handover. Reading the chapters – from British diplomats to Hong Kong democracy activists – one is struck by the fact that no matter the nationality or age, the underlying theme is the search for the dignity of political rights. Long denied political rights under the British Empire, Hong Kong’s citizens were instead granted economic freedoms. However, as London was wont to do, it imparted the legacy of its own discourses and debates on political rights to the elites of the City, only to have the Chinese Communist Party attempt to push Hong Kong’s citizens back into the box. Reading the latter half of the report, one thing that becomes abundantly clear is that Asia’s youth are less and less content with waiting any longer for the sort of political rights that many of us in the West have taken for granted over the past 150 years. Indeed, a whole new identity is shaping itself on that very basis. One hopes – though with little confidence – that China’s leaders will heed the lessons of the American Revolution, in which a people’s thirst for liberty became so great, that it finally broke the fraternal bonds which bound colonies to motherland. If Xi can stop projecting the *China Dream* and listen to the echoes of history – he might hear the thoughtful warning from President John F. Kennedy: “Those who make peaceful revolution impossible will make violent revolution inevitable.”

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1. The Negotiations For The Handover

Hugh Llewelyn Davies

UK Ambassador, Joint Liaison Group, 1993-1997

Britain acquired Hong Kong over three stages during the 19th century; first Hong Kong Island under the Treaty of Nanking in 1842, then Kowloon under the Convention of Peking in 1860, and finally the New Territories under a 99-year Lease agreed in the Second Convention of Peking in 1898¹. It was the time horizon of this Lease that effectively provided the reason for the termination of Britain's occupation of Hong Kong in 1997. Successive Chinese governments were unhappy about the existence of Hong Kong and regarded it as one of the worst outcomes of the so-called "Century of Humiliation". It remained the determination of all Chinese officials that sovereignty over Hong Kong would one day be reclaimed.

This section will cover two main themes. First, it will examine the development of the system used by Britain to govern Hong Kong for nearly 150 years with assistance from trusted locals, and how after the Second World War and the return of British administration, demands for a greater degree of local participation led to the creation of elections in the last years up to 1997. Secondly, it will examine the history of UK-China negotiations between 1979 and 1997, which led to the establishment of the Hong Kong Special Administrative Region (SAR).

1.1 Hong Kong's Colonial Governance

Representative government institutions were set up from the earliest days. An appointed Legislative Council was established in 1843, and soon expanded to a small number of Chinese as Unofficial Members. This LegCo advised the Governor on issues affecting the Colony. Over the years, this system of colonial administration developed into what has been described as "elite consensual government". Under this, some political observers have observed that "any coalition of elites or forces capable of challenging the legitimacy of Hong Kong's administrative structure would be co-opted by the existing apparatus through the appointment of leading political activists, business figures and other elites to oversight committees, by granting them British honours, and by bringing them into elite institutions"².

The system was more or less the same throughout the British Empire. The Governor would create a small Executive Council (ExCo) in order to administer the Colony. ExCo's would include the main British officials, such as the Colonial Secretary and the Financial Secretary, and usually the Lieutenant Governor or senior British military official, together with a few selected senior British and local businessmen and community leaders, chosen for their influence and abilities. LegCo's were a somewhat larger body, but again unelected, consisting of officials representing various branches of the administration and 'Unofficials' chosen because of their positions in society and their readiness to assist the government in an advisory capacity.

This system persisted - with some gradual amendments - effectively from the very earliest days of Hong Kong's existence right up until 1985. Various reasons have been put forward for this state of affairs, which was at odds with Britain's general policy of gradual advance of local political

¹ Wesley-Smith, P., *Unequal Treaty 1898-1997: China, Great Britain and Hong Kong's New Territories* (Hong Kong: Oxford University press, 1984).

² King, A., 'Administrative Absorption of Politics in Hong Kong: Emphasis on the Grass Roots Level', *Asian Survey* 15.5 (1975).

representation in other colonial territories. One theory is that those individuals selected for the two bodies had little interest in diminishing their own influence in Hong Kong.

1.2 After 1945

The Second World War brought huge uncertainties to the colony.³ Hong Kong was a transitory society, made up of refugees from the Civil War and Communist victory in the mainland. The arrival of the Communists on the mainland, and particularly the Cultural Revolution, added to the feeling that Hong Kong was a safe haven rather than a permanent home. The bulk of the population until the latter part of the 20th century was poor and uneducated with limited interest in politics so long as they were left alone to live and prosper. The Chinese Government at this time opposed any expansion of the franchise fearing that it would lead to demands for self-determination. Particularly following the establishment of the PRC in 1949, various channels were employed to make their views known.

1.3 During the Cold War

In 1958, a message was relayed to the British Prime Minister Harold Macmillan that Zhou Enlai wished him to know that any move towards making Hong Kong a self-governing dominion would be regarded as a very unfriendly act: “any such development would be most unwelcome to the Chinese who did not want to see Hong Kong made into another ‘Singapore’”.⁴ Shortly after, Liao Chengzhi, Director of Overseas Chinese Affairs, told Hong Kong Chinese representatives that any move by the British towards promoting self-government in Hong Kong would be strongly resisted by Beijing. “We shall not hesitate to take positive action to have Hong Kong, Kowloon and the New Territories liberated... the present status of Hong Kong is to our benefit”.⁵

Immediately after the People's Republic of China joined the United Nations in 1971, Beijing successfully pushed for Hong Kong (along with neighbouring Macau, then a Portuguese colony) to be removed from a list of “non-self-governing” territories for whom all steps were to be taken by the UN “to enable them to enjoy complete independence and freedom”.⁶ The Chinese statement said that these territories were not colonies to proceed to independence but would be returned to China when the time was ripe.

Against this background, Britain made no great efforts to promote political development. Indeed, one of the most influential Governors, Sir Murray MacLehose (1971-82), who greatly advanced social services and housing to the benefit of the community, as well as establishing the Independent Commission Against Corruption (ICAC), was not in favour of pushing forward representative democracy. He was however the man to whom it fell to probe Chinese intentions on the upcoming expiry of the New Territories' lease, during his visit to Beijing in 1979.⁷

1.4 The Pace of Negotiations in the 1980s

It was thus not until negotiations in the early 1980s, that Britain realised it would now definitely have to relinquish the colony and decided to establish a system of elections to the Legislative Council. After all no British Government had departed from one of its colonies without first establishing a properly functioning electoral system. A 1984 *Green Paper on the Further*

³ Wesley-Smith, P., ‘The Future of Hong Kong: Not What it Used to Be’, *Vanderbilt Journal of Transnational Law* 3 (1997), p. 426.

⁴ *ibid.*, p. 440.

⁵ Gordon Crovitz, L., ‘Beijing’s Hong Kong Disinformation’, *Wall Street Journal*, 27 October 2014.

⁶ John M. Carroll, J.M., *A Concise History of Hong Kong*, (Plymouth: Rowman & Littlefield Publishers, Inc. 2007), p. 177.

⁷ Cheung, G., ‘Deng kept his HK options open in 1979’, *South China Morning Post*, 2 January 2010.

Development of Representative Government proposed a complex system of indirect franchises, including so-called Functional Constituencies whereby different businesses, organisations etc. would have the right to elect their own LegCo representative. Chinese officials were extremely suspicious of these modest steps and as a result, began to push for an Executive-led system, during negotiations. Despite growing Chinese pressure, British negotiators scored a small victory in the form of a significant sentence, against vigorous Chinese objections in the 1984 Joint Declaration, that read: “The Legislative Council shall be constituted by elections”.⁸ Thereafter, the two sides would have to negotiate about the form of elections.

The first LegCo elections took place in 1985, but none of the seats was directly elected. Despite this, a slight increase in the franchise in 1988 showed that Britain was determined to push the envelope and, against Chinese resistance, was able to arrange that 50% of the seats at the following Election in 1991 were directly elected, the others still indirectly. This period was of course deeply coloured by the Tiananmen massacres in 1989 and public reactions in Hong Kong.⁹ China became increasingly suspicious of Hong Kong because of the material and moral support for the demonstrators in the Square; Hong Kong was traumatised by the military crackdown that followed; and Britain became even more determined to anchor democratic institutions in Hong Kong before 1997.

1.5 Trying to Find Compromises

Confidential diplomatic discussions between Foreign Secretary Douglas Hurd and Foreign Minister Qichen Qian sought to resolve these differences. It was at this point that the former Conservative Party Chairman Chris Patten arrived in Hong Kong, as the last British Governor. He inherited what he regarded as a constitutional mess, and a derogation of British responsibility to ensure free and fair elections, and decided to use what little leeway there was in the agreed formulae to expand the franchise to approximate as closely as possible to universal suffrage.¹⁰ Unsurprisingly, given their historical animosity to any constitutional moves that might threaten their control of a future Hong Kong SAR, Chinese officials deeply opposed Patten’s proposals. They criticised his “triple violation”, violating the Joint Declaration, the Basic Law, and the Understandings (i.e. the confidential letters) between the two sides.

Discussions to try to resolve the differences then took place but, after 17 rounds of fruitless talks, they were unilaterally abandoned in late 1993, and LegCo passed into law the controversial new electoral arrangements based on proposals made by Patten. The British abandonment of the talks and the LegCo action in passing the law provided the excuse for the Chinese side to announce that the so-called “Through Train” (for the LegCo to be elected in 1995 to continue through the 1997 Handover), would not now be abandoned. Instead they set up a “Provisional Legislative Council”, made up of some pro-China LegCo members, together with a number of other people selected as trustworthy by Chinese officials. The PLC was sworn in by senior Chinese officials immediately after the Handover Ceremonies on the night of 30 June/1 July 1997. Members of the legitimate LegCo held a protest meeting at the LegCo building to coincide with this procedure and British Ministers boycotted the Chinese ceremony.

⁸ Martin, M.F., ‘Prospects for Democracy in Hong Kong: The 2012 Election Reforms’, *Congressional Research Service*, 10 December 2009, p. 1.

⁹ Carroll, J.M., *A Concise History of Hong Kong*, p. 191.

¹⁰ Chan, M.K., and Sonny Shiu-Hing Lo, *The A to Z of the Hong Kong SAR and the Macao SAR* (Plymouth: Scarecrow Press, 2006), p. 11.

The first new LegCo elections under a model approved by Chinese officials (based on the pre-Patten arrangements) took place in 1998. By this point British direct involvement in decision-making on Hong Kong's constitutional arrangements had ceased. Britain continued to make clear its views on China's adherence to the provisions of the Joint Declaration, first through the Joint Liaison Group (JLG) whose work only terminated on 31 December 1999, and subsequently through the Foreign and Commonwealth Office's (FCO) Six-Monthly Reports to Parliament, as well as via diplomatic channels. The Joint Declaration is an international treaty, deposited at the United Nations, and despite its recent statements, China is obliged to adhere to its provisions, and its undertakings to the UK, for at least 50 years from 1997.¹¹

This section has so far concentrated on the pre-Handover constitutional and electoral background to what has been happening in the Hong Kong SAR over the past 20 years. But, of course, this was only part of the story of China's resumption of sovereignty and administration of the former colony. This story effectively began with the visit by then-Governor Sir Murray MacLehose to Beijing in 1979, when he raised with Deng Xiaoping the uncertainty facing investors in Hong Kong arising from the end of the New Territories' lease only 18 years ahead. Deng famously told MacLehose to tell investors "to set their hearts at ease",¹² but also made clear (not publicised at the time) that, while sovereignty over Hong Kong belonged to China, the special status of Hong Kong would be respected. This reflected the fact that Chinese officials had long accepted that Hong Kong was an irreplaceable asset for China's access to the outside world and to international business. They had no wish to "kill the golden goose", but rather wished to own it.

1.6 From Thatcher to the Present-day

The next substantial contact between Britain and China over Hong Kong was during Prime Minister Thatcher's 1982 visit to Beijing. Prior to that, China had clearly worked out the parameters of its position. Deng had come up with the concept of *One Country, Two Systems*, initially as a concept to be applied to Taiwan, which was then extended to Hong Kong and Macau. Additionally, an amendment to the Constitution of the PRC was passed in early 1982, reading: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions".¹³ Thus, the Chinese were already well-prepared before the visit of the British Prime Minister in 1982.

Prime Minister Thatcher, off the back of the triumphal recapturing of the Falklands, was in fighting mood and hoped to trade her willingness to concede China's sovereignty for Deng's agreement to continuing British administration.¹⁴ But Deng was unpersuaded, and after further sparring, the two sides eventually agreed to begin detailed negotiations. These took place in Beijing over a number of rounds through 1983 and 1984, the British side being led by the FCO but including the Governor of Hong Kong. The Chinese positions were unyielding, and in April 1984, Foreign Secretary Geoffrey Howe announced – to a largely disbelieving Hong Kong – that British administration as well as sovereignty would cease on 1 July 1997.¹⁵ The next months were taken up with the British drafting and delivering lengthy sections of what would become Annex 1 of a Joint Declaration, these

¹¹ Supplementary Report of the United Kingdom in Respect of Hong Kong, UN Document CCPR/C/117, paras 3-7 (1996) and the statement of the Representative of the United Kingdom Government, CCPR/C/SR. 1535 (1996)

¹² Carroll, J.M., *A Concise History of Hong Kong*, p. 177.

¹³ Decision of the National People's Congress on the Basic Law of the Hong Kong Special Administration Region of the People's Republic of China, available at: http://www.basiclaw.gov.hk/en/basiclawtext/attached_2.html, last visited: 16 October 2017.

¹⁴ Davies, H.L., *1997: Hong Kong: Handling the Handover* (Lulu, 2016).

¹⁵ Wren, C., 'British Official Confers in Peking on Hong Kong', *New York Times*, 17 April 1984.

sections setting out in detail all the major components of what made Hong Kong operate smoothly, notably the Common Law and all the relevant statutes and agreements. The substantive part of the JD, already largely set in stone, laid out the Chinese overall policy over the future Hong Kong. The JD also established a Joint Liaison Group to discuss all matters relating to the Return of Hong Kong during the intervening 12½ years.

The JLG met normally in Hong Kong, but also held one meeting a year in the respective capitals and had an enormous agenda, principally to explain to the Chinese and seek agreement to every single Hong Kong law; to agree on the establishment of a Court of Final Appeal; decide matters relating to the military estate, nationality and immigration issues; international links; as well as all contracts and franchises straddling 1997 etc.

A Land Commission was also established under the JD to discuss and allocate the income from Hong Kong's disposal of land between 1984 and 1997 - this was a device to manage Beijing's extraordinary concerns that Britain would otherwise abscond with Hong Kong's treasury. A final matter that later (from 1992) came under the JD's aegis with the establishment of the Airport Committee, was the financing and construction of the New Airport at Chek Lap Kok¹⁶ and associated works, again to manage the same Chinese worries that this was a final British plot to develop commercial contracts at the expense of the people of Hong Kong.

1.7 Summary

In conclusion, it is clear that despite its imperial legacy, Britain had a long and often mutually beneficial partnership with Hong Kong, and still retains strong economic and social links with the territory. The UK has bequeathed to Hong Kong many essential components of a modern society and economy, notably the Rule of Law, a level playing field for business, and a zero tolerance toward corruption. Thirty years of the 50 years laid down in the Joint Declaration still lie ahead. Britain is fully committed to standing by Hong Kong throughout that period - and indeed beyond it.

Ambassador Hugh Llewelyn Davies CMG was the British Senior Representative and Ambassador to the Sino-British Joint Liaison Group on the Question of Hong Kong between 1993 and 1997.

¹⁶ Davies, H.L., *1997: Hong Kong: Handling the Handover*, p.67.

2. The Rule of Law in Hong Kong

Professor Carol Jones

Birmingham University

In 1997, Hong Kong was regarded as an exemplar of a free-market, capitalist economy characterised by the rule of law, an independent judiciary, low rates of corruption and a swathe of legal protections promising continued stability and prosperity.¹⁷ The rule of law, free speech, independent courts, free trade, and impartial prosecution were inextricably linked to its capitalist system, values, and ‘way of life’. Rule of law was the “glue by which millions of people of different ambitions, abilities and temperament may be joined together”.¹⁸

2.1 Following 1997

Initially, the 1999 case of *Ng Ka-ling V Director of Immigration* the Court of Final Appeals (CFA) suggested that China would continue this mix unaltered. The CFA’s judgment was hailed as the best shot in the arm for the rule of law since the handover. However, the court was subsequently forced by the National People’s Congress Standing Committee (NPCSC) to accept that it did not have the power to interpret the Basic Law (BL). Subsequently, the CFA seems to have assumed it lacks the power to challenge *any* NPCSC Interpretation of the BL.

After the case, Hong Kong citizens’ approval rating of Chinese rule dropped from 60% in 1998 to 42%. By the second anniversary of the handover, 43% thought the rule of law had already deteriorated. Twenty years later, this downward spiral continues. On the 20th anniversary of the hand-over, only 3.1% of Hong Kong youth identified as Chinese, a twenty-year low; a Chinese University of Hong Kong (CUHK) poll found that less than 40% of the city’s residents were satisfied with the ruling Chinese Communist Party; 62.9% thought things were worse than before 1997; one third wished to emigrate. International investors increasingly look to Singapore instead of Asia’s ‘world city’. In October 2017, the World Economic Forum’s Global Competitiveness Index downgraded Hong Kong’s judicial independence ranking by five spots to number 13 in the world.¹⁹

The Joint Declaration (JD) is an internationally recognised treaty binding on the two sovereign powers. However, in July 2017, China announced that it no longer regarded the JD as valid, denying the UK a locus for monitoring Hong Kong affairs. In 2014, members of the Foreign Affairs Scrutiny Committee, were denied access to Hong Kong; Benedict Rogers, deputy chair of the Conservatives’ human rights commission, was refused entry in October 2017. Similarly, the statement by twelve senior British lawyers (including judges and a former Lord Chancellor) was characterised by the Chinese Ministry of Foreign Affairs (MFA) as “foreign interference in the internal affairs of China”.

2.2 Cases of the Breakdown of the Rule of Law

What was once transparent and accountable under law is now obscure and unpredictable. In 1999, for example, a Hong Kong criminal (‘Big Spender’) was tried and executed by the mainland for crimes committed in Hong Kong. Calls for him to be extradited to Hong Kong were dismissed, as there was no rendition agreement between the two jurisdictions. Twenty years on, there is *still* no formal rendition agreement. Those wanted by mainland authorities simply ‘disappear, only to re-

¹⁷ The Sino-British Joint Declaration, 1984; the Hong Kong Bill of Rights, 1991; The Basic Law of the Hong Kong Special Administrative Region.

¹⁸ Chris Patten, last British Governor of Hong Kong, cited in Flowerdew, J., *The Final Years of British Colonial Hong Kong* (Palgrave Macmillan, 1998).

¹⁹ ‘Hong Kong Slips Two Points in Global Competitiveness Index’, *South China Morning Post International Edition*, 18 September 2017.

surface in mainland detention: in a 2016 case, five Hong Kong booksellers alleged to have sold ‘sensitive’ books disappeared. Similarly, in 2017, tycoon Xiao Jianhua was ‘removed’ and taken to mainland China. Despite assurances that mainland authorities would not operate in Hong Kong without government agreement, hundreds of mainland security and intelligence officers conduct surveillance on both locals and mainlanders. Their presence has had a chilling effect on freedom of speech, freedom of association and the free flow of information.

2.3 Article 23

Since 1997, the mainland has insisted that the Hong Kong Special Administrative Region (HKSAR) government introduce a National Security law, as specified in Article 23 of the BL. This would prohibit (1) “any act of treason, secession, sedition, subversion against the Central People’s Government”; (2) ban foreign political organisations from conducting political activities in the Region; and (3) bar political organisations from establishing ties with foreign political organisations.²⁰ Polls in December 2002 showed that 54% of Hongkongers opposed the Bill – most offences were already covered by existing legislation, and there were significant misgivings about Beijing’s definitions of *subversion*, *sedition* and *secession*. On 1 July 2003, 500,000 people demonstrated against Article 23. Subsequently, the government postponed the legislation, but in recent months (*as of writing in October 2017*) it has been resurrected.

2.4 Politically Motivated Prosecutions

Since 1997, Hong Kong has become a city of protests. The jailing in 2017 of pro-democracy activists Joshua Wong, Alex Chow and Nathan Law is widely seen as politically motivated. Overruling senior prosecutors, the Secretary of Justice (a political appointee) retroactively appealed the non-custodial sentences handed down by magistrates. The defendants were imprisoned, effectively barring them from standing for public office. Others involved in the 2014 Occupy Central movement shared a similar fate. Their removal from the Legislative Council (LegCo) underscores the permanent nature of the pro-Beijing majority. The case raised significant questions about the role of the Director of Public Prosecutions.

2.5 Abuse of Police Powers

The police response to street demonstrations is often seen as a barometer of the state’s political character. Hong Kong has experienced an increase in arbitrary arrest, hampering freedom of assembly. In 2017, seven police officers assaulted an Occupy protestor; clashes on 9 February 2016 prompted claims that the authorities contravened fair trial principles of presumption of innocence and proportionality of penalty.²¹

2.6 Corruption

The Independent Commission Against Corruption (ICAC) has long been crucial to Hong Kong’s reputation as a city of law and public confidence in government. However, there is a suspicion that the ICAC is unable to pursue mainland-HKSAR corruption. Public confidence is also weakened by a rise in crime, ‘gangsterism’, cronyism and corruption (including amongst senior civil servants). A visibly impartial ICAC is vital to maintaining equality before the law in Hong Kong.

2.7 Independence of the Judiciary

²⁰ Article 23 of the Basic Law of the Hong Kong Special Administrative Region.

²¹ Chen, C., ‘Down with Evil Ordinance, Uphold Human Rights, Set Free the Righteous!’, *Local Press*, 17 October 2017.

The independence of the judiciary has repeatedly been called into question since 1997. In 2012, Beijing supporters called for all judges to be Chinese, severing the territory's links with the Common Law world and excluding foreign judges from the CFA. The independence of the judiciary is inimical to a one-party, executive controlled state. A White Paper on One Country, Two Systems issued by China in August 2014 stated that:

“... *judges of the courts at different levels and other judicial personnel*” (were responsible for) correctly understanding and implementing the Basic Law, of safeguarding the country's sovereignty, security and development interests... In a word, loving the country is the basic political requirement for Hong Kong's administrators. If they are not... patriots... they cannot be loyal to the country and the HKSAR...²²

This requires judges to prioritise mainland interests (economic development, maintenance of a single-party state) in their decisions.²³

2.8 The Oath Taking Cases

In July 2017, the High Court stripped six members of the Hong Kong Legislative Council of their legislative seats for improper oath-taking. Mr Justice Au argued that it was “a constitutional legal requirement that the oath taker, in taking the oath, must also - sincerely and truly believe in the pledges under the oath that he or she is taking”. Two other pro-democracy LegCo members had already been disqualified.

The Court's decision followed an interpretation of Article 104 of the BL by the NPCSC.²⁴ Critically, this appeared *before* the court case. Consequently, the court had little option but to follow the NPCSC's Interpretation. Article 158 of the BL gives the power of adjudication to the courts but interpretation of the BL to the NPCSC. According to Martin Lee, “... the NPCSC is trying to take away the [local] courts' right to handle such important cases in future... the courts would then have no choice but to rule based on the interpretation”.²⁵ Amnesty International stated that the decision “confirms the Hong Kong -government's agenda to silence and effectively punish any speech critical of the present political system, wherever it may occur, even within the legislature”.²⁶

2.9 Summary

Before 1997, Hongkongers were given legal rights rather than political rights, legal representation rather than political representation, and legal accountability rather than political accountability. Though no substitute for universal suffrage, these nevertheless produced a highly successful, and stable Hong Kong. The rule of law was vital to this executive-led form of governance. Since 1997, however, the rule of law has been weakened by poorly judged mainland interventions. The UK is apparently unwilling to tackle China when it fails to live up its commitments under the JD.

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²² Emphasis added.

²³ State Council, The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region, August 2014.

²⁴ Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (Adopted by the Standing Committee of the Twelfth National People's Congress at its Twenty-fourth Session on 7 November 2016).

²⁵ SCMP, 7 November 2016.

²⁶ 'Hong Kong: Disqualification of lawmakers underscores government agenda to silence political critics', *Amnesty International*, 14 July 2017.

3. Hong Kong's Economy Since 1997

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Hong Kong's economic performance since 1997 has been strong, though it has also experienced two deep recessions and some very difficult times. GDP per capita grew at an average rate of 2.5%, significantly faster than the UK at only 1.3% (see Table 1).²⁷ These figures are in purchasing power parity terms, i.e. adjusting for the cost of living. Comparing cities with countries can be misleading because cities are always more productive, but Hong Kong's growth has – for example – significantly outstripped London's (1.6%). Moreover, from a level well below London's in 1997, Hong Kong's GDP per capita is now higher.²⁸

The citizens of the Hong Kong Special Administrative Region (HKSAR) are still almost four times richer than China's on average but in 1997, they were nearly 12 times richer: stellar economic growth in China over the past decade has narrowed the gap.²⁹ While some of the mainland visitors to Hong Kong are low-income, many are well-off elites with large amounts of free capital. Mainlanders in Hong Kong are no longer all 'poor cousins'. Rapid growth in China has also changed the balance of economic power between the HKSAR and the mainland. While Hong Kong's GDP was equivalent to 18% of China's in 1997 it is now just under 3%.³⁰ These figures are in nominal GDP, which is the best measure of the international importance of two countries. In effect China boosted its GDP by almost one-fifth in 1997³¹ when it gained Hong Kong while today a dozen or more mainland cities in China are larger than Hong Kong in terms of GDP.

Table 1: Hong Kong's Economic Performance

GDP per capita (PPP constant 2017 USD)

	1997	2017	Change%	% pa
Hong Kong	33594	54894	63	2.5
UK	29820	38865	30	1.3
London (est)	41000	56000	36	1.6
China	2875	14681	410	8.5

Hong Kong's nominal GDP as% of China

	18.30%	2.90%		
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Other indicators

Population	6489	7336	13.1	0.6
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Source: Thomson DataStream

Rapid growth in China also means that major mainland cities such as Shenzhen, Guangzhou and Shanghai have become much more sophisticated and are now challenging Hong Kong in many areas of business. The Hong Kong government identifies four key sectors in Hong Kong's economy: trading and logistics, finance, professional and producer services and tourism (see Table

²⁷ Oxford Economics via Thomson Reuters Datastream.

²⁸ Hong Kong in Figures 2016, Eurostat and author estimates.

²⁹ Oxford Economics via Thomson Reuters Datastream.

³⁰ World Bank, World Development Indicators and author estimates.

³¹ World Bank, World Development Indicators.

2).³² Trading and logistics, Hong Kong's traditional strength, is gradually being overhauled by financial services which will soon be the largest measured by value-added. Hong Kong still has a strong edge in these sectors because of its depth of experienced professionals. It also has the English Common Law, effective courts and very low levels of corruption which continue to make it an attractive base for multinationals (including mainland Chinese companies).

Table 2: Four Key Industries

	Value-added% of total	V-A Growth 2005-15% pa	Employment% of total	Employment Growth 2005-15% pa
Trading and logistics	22.3	2.8	19.8	-0.9
Financial services	17.6	8	6.5	3.2
Prof & producer services	12.3	6.7	13.8	2.6
Tourism	5	10.1	7	4.9
TOTAL				
4 KEY INDUSTRIES	57.2	5.5	47.1	1.3
Whole economy	100	5.4	100	1.2

Source: HK Monthly Digest of Statistics May 2017 special article

Hong Kong is usually placed 3rd or 4th among international financial centres after London, New York and Singapore. Traditionally, its strength lay in its connections with New York and London and its geographical position in Asia. Today, while it is still an important international FX trading centre, its biggest strength is in business with China. Hong Kong now rivals New York in its Initial Public Offering (IPO) and mergers and acquisitions activity, with many of these coming from mainland companies.

However, the increasing role of mainland companies, sometimes referred to as 'Red capital', is often viewed with disquiet in Hong Kong.³³ As will be discussed in the next chapter, most of these companies are either state-owned or closely connected to the Communist Party of China (CPC). While some operate in Hong Kong partly to escape heavy-handed government influence, there are worries in pro-democracy circles that others may reflect a political agenda. In Hong Kong business circles there are concerns that mainland companies may be better connected to the mainland government in ways that could work to the disadvantage of Hong Kong companies.

3.1 Rollercoaster Growth

Despite Hong Kong's strong economic performance, it has not been a smooth ride. On 2 July 1997, just one day after the handover, Thailand was forced to devalue the baht, triggering the Asian Crisis. As other Asian countries devalued to maintain competitiveness the new government in Hong Kong opted to defend the Currency Board which links the HK dollar to the US dollar at about 7.8.³⁴ But this required keeping interest rates high as well as cutting wages to restore competitiveness, a very painful process, as Greece, Spain and others in Europe have discovered again in recent years.

³² Hong Kong Monthly Digest of Statistics, May 2017.

³³ For further discussion of Red Capital, see Chapter 4.

³⁴ Devereux, M.B., 'A Tale of Two Currencies: The Asian Crisis and the Exchange Rate Regimes of Hong Kong and Singapore', *Review of International Economics* 11.1 (2003), pp. 38-54

Apartment prices were high in 1997 but high interest rates triggered a long painful decline with prices down nearly 70% at the low.³⁵ From 2003 onwards, once the effects of the SAR's disease were past, property prices began to rise again and, with a brief interruption during the crisis in 2008 have soared once again to very high valuations (for example compared with earnings or rents), with many talking of another bubble. In common with the rest of the world Hong Kong's GDP declined sharply in 2008-9 but recovery was rapid in 2009-11 and, in contrast to the disappointments in the West, growth has remained solid.

3.2 Three Major Economic Challenges in 2017

3.2.1 High Property Prices

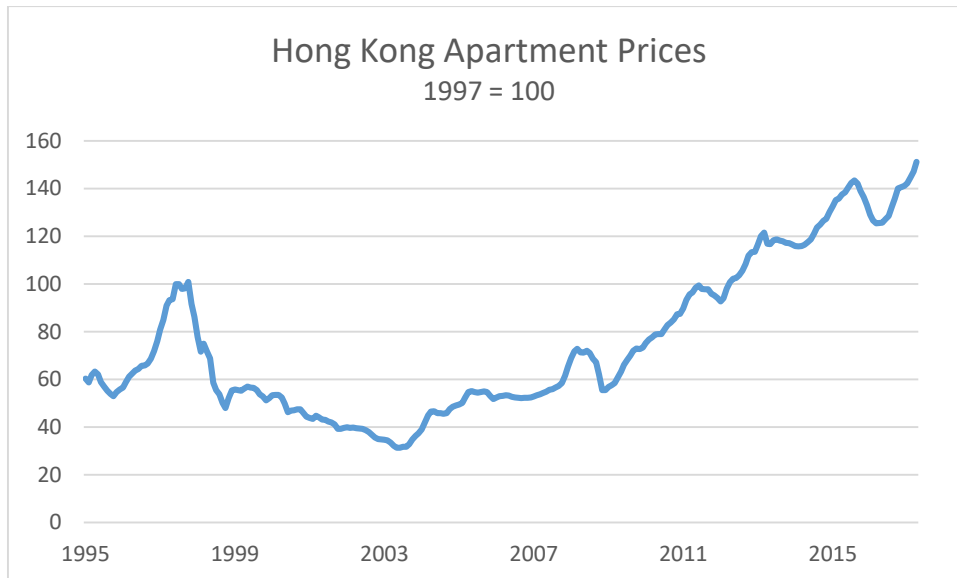
This goes hand-in-hand with concerns about inequality and the difficulty young people face in finding good jobs. In a sense, Hong Kong is in the forward trenches when it comes to globalisation, with millions of increasingly well-educated mainlanders just a short train ride away. Inequality in Hong Kong is high on measures such as the Gini Coefficient,³⁶ though again it can be misleading to compare cities with countries. Inequality in London with its high numbers of professionals and company executives is much higher than in the UK as a whole and comparable with Hong Kong. Still, when inequality is combined with very high property prices, social tensions are exacerbated.

Hong Kong has been repeatedly plagued by property bubbles for two reasons. First, the Currency Board arrangement means that interest rates tend to track US rates and, with the exception of the period of the Asian Crisis, rates have usually been too low for Hong Kong's economy. Secondly the government restricts the supply of land, partly to protect property owners and developers but also to raise income. Hong Kong's low income tax rates (a top rate of 17%) are possible partly because of the substantial income from land sales.

Figure 1: Hong Kong Apartment Prices

³⁵ Centa-City Index, Centaline Property Agency, available from Thomson Reuters Datastream.

³⁶ 'Thematic Report: Household Income Distribution in Hong Kong', 2016 Population By-census, Hong Kong Census and Statistics Department, June 2017.



Source: Centaline

Starting from the high level of property prices today there are no good outcomes. A major collapse in property prices as in 1997 would hurt the economy as well as the middle classes, while if prices stay high, few young people will be able to afford to buy. The problem is similar to that of the UK but much more acute. Even if people can find apartments the average new home in Hong Kong measures just 484 sq ft compared with 818 sq ft in Britain (and 1200 sq ft or more in most of Europe).³⁷

3.2.2 Rapid Ageing

The proportion of people over 65 is set to rise from 16.5% in 1997 to 26.5% by 2030 according to the latest projections from the Census and Statistics Department.³⁸ Providing adequate pensions and health and social care for Hong Kong's ageing population will inevitably burden the government and is unlikely to be managed without higher taxation.

3.2.3 China Dependence Risks

In the 1960s and 70s Hong Kong's economy grew rapidly by exporting basic goods such as clothing, toys and electronics to the US and Europe. Following the opening of China in 1978 it began to carve out a niche for itself as the business and service sector for China. By 1997 Hong Kong was already increasingly integrated with China, providing logistical and business services to Hong Kong companies whose manufacturing had by now moved across the border. Today, the majority of economic activity is geared towards China. This has been beneficial in recent years, especially with China's economic growth far outstripping that of the rest of the world. But will China continue to grow fast?

There are two schools of thought. Many economists, including this author, believe that China's high corporate debt, over-investment in infrastructure and heavy industry, and fragile financial system are a major threat to continued growth. Both the IMF³⁹ and the Bank for International Settlements⁴⁰

³⁷ 'Australian homes are the biggest in the world', *Economic Insight, Commonwealth Securities*, 30 November 2009.

³⁸ 'Hong Kong Population Projections, 2017-2066', HK Census and Statistics Department, September 2017, Table 3, pp. 11-17.

³⁹ 'PRC Article IV Consultation', IMF Country Report No 17/247, Washington, August 2017, p. 10.

⁴⁰ *Annual Report 2016/17*, Bank for International Settlements, June 2017, p. 12.

have repeatedly warned of the risks of a financial crisis. While a crisis is possible, another scenario is that China's growth simply runs out of steam in coming years with economic growth subsiding to only 2-3% or so, rather than slowing marginally to the 5-6% per annum anticipated by more optimistic analysts.

Today, China's GDP stands at about 62% of US GDP though it is already greater if measured in PPP terms.⁴¹ The optimists expect continuing solid growth to allow China to catch up with the US in nominal terms before 2030. This would support solid growth in Hong Kong, though Hong Kong's relative importance would continue to dwindle. But if China's growth slows, or especially if there is an economic crisis, Hong Kong could face a property price collapse and much weaker economic growth.

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⁴¹ World Economic Outlook Database, IMF, October 2017.

4. Red Money in Hong Kong

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Ever since the People's Republic of China was established in 1949, Hong Kong has been host to 'Red Capital', that's to say, the commercial interests from China owned by the Chinese state, the Chinese Communist Party (CCP) or its Chinese party elites. At first, Red Capital operated mainly in the form of a small number of nationally owned corporations such as the Bank of China (HK Ltd) or China Resources, which mainly performed the function of procuring foreign embargoed goods and hard currency much needed by the Chinese government. In addition, there were small concerns whose main function was to serve as cover for clandestine communist activities aiming at infiltrating Taiwan and Southeast Asia, spreading narratives of world revolution and national unification, respectively.

4.1 Red Money Takes Shape

This changed in China after 1978. In the late 1980s and early 1990s, numerous Chinese state and local government corporations began registering offices and local headquarters in Hong Kong, in order to perform economic activities both in the city and overseas. Many of the earliest listings in the Hong Kong Stock Exchange (HKSE) simply bought zombie or 'shell' companies already listed in the city's stock exchange and linked them up with assets in China. These companies, though registered in Hong Kong, were owned by China and thus came to be known as 'red chips'. Later, many Chinese state-owned enterprises (SOEs) simply listed their shares directly in the HKSE. These shares are known as H-shares, while the shares of those same companies sold in mainland exchanges and denominated in the Chinese currency, were called A-shares. The main goal for Chinese companies to sell their stocks in Hong Kong has been to raise capital through Hong Kong's highly globalised financial markets, and funnel it back to their parent companies in China to fund growth. Few of them have been interested in integrating into and participating in the local economy of Hong Kong.

4.2 'Princelings'

At the same time, there appeared Red Capital of a different kind. These Chinese SOEs did not operate as normal economic entities; but rather were controlled by powerful communist leaders who used them to enrich themselves and their families. Given the factional infighting within the upper echelons of China's party, such as the 2012 Bo Xilai case, many⁴² of China's wealthiest party elites have sought to push at least a large proportion of their wealth outside the country, to be managed by relatives. The first and easiest stop for such money is Hong Kong, and from there, if needs be, to off-shore accounts like the Cayman Islands. There are few Chinese communist party leaders of renown who do not own a private equity fund in Hong Kong through their sons, known disparagingly as 'princelings', or their other family members. Recent revelations by a self-exiled Chinese billionaire with intimate knowledge of the private wealth of the Chinese ruling class, has revealed that even the family of Wang Qishan, the 'anti-corruption tsar' and right-hand man of Xi Jinping, is implicated in the corrupt side of using SOEs to create personal wealth. In this case, the

⁴² Wong, E., 'Ousted from Party in China, Bo Xilai Faces Prosecution,' *New York Times*, 28 September 2012.

money has come from Hainan, a province with a reputation for corruption, and has been invested into US real estate.⁴³

Such ‘princeling’ wealth in Hong Kong has made the city into a centre for money laundering of China’s rich and powerful. However, paradoxically, the presence of such wealth may have been giving a layer of protection to Hong Kong’s long-term viability in the face of increasingly strident acts of intrusion into the affairs of the city by Beijing with the aim of undermining the ‘colonial’ institutions of rule of law and the various political freedoms. It is not difficult to see why. With Hong Kong as a safe haven for the wealth and lifestyles of these ‘princelings’, they are naturally disinclined to any further dismantling of the ‘one country, two systems’, which protects them at times from the anti-corruption campaign carried out by Xi and his allies.⁴⁴

4.3 The Era of Red Investment

The newest form of Red Capital, however, is totally different. On the surface, it initially looks quite normal, even beneficial. It integrates and participates actively in the economy of Hong Kong, raising and reinvesting capital locally, oftentimes gobbling up local Hong Kong firms in the process. One recent example here is the ‘friendly’ acquisition of the Orient Overseas Container Lines, a global fleet company majority-owned as heirloom by Tung Chi-hwa and family, by its Chinese rival COSCO. Tung was the first chief executive (mayor) of the post-1997 Hong Kong government and has enjoyed the honorary status of a ‘city leader’ since stepping down in 2004. Nevertheless, when Beijing wanted his company’s assets, he was compelled to hand them over.⁴⁵

This new wave of Red Capital consists of new money from China, but also includes reinvigorated old-timers such as the Bank of China and China Resources. It is the result of Chinese elites becoming aware of the political leverage of China’s new-found wealth, particularly after 2007, when China’s economy reached peak growth. It has since made its presence felt in insurance, retail and corporate banking, construction, real estate development, energy, tourism, local and regional transportation, and many other lines of business that relate to the livelihood of ordinary Hong Kong people, and together employs a lot of locals.

In real estate development, the share of newly released or redeveloped land that Chinese companies have bought in Hong Kong increased from less than 6% of the city’s total in 2009 to 30% in 2016 and 50% in the first half of 2017. In contrast, the share of new residential sites won by the seven biggest local developers in public auctions has shrunk steadily: from 45% in 2012 to 22% in 2016.⁴⁶

In the financial sector, Chinese companies have already swamped Hong Kong’s stock market. In 2016, more than half of all companies listed on Hong Kong’s two exchanges were Chinese entities. Their capitalization amounted to 63% of Hong Kong’s stock market total, and their shares made up 71% of the average daily trade volume.⁴⁷

⁴³ See, for example, China Gate (2017) ‘Guo Wengui: Wang Qishan qizi qimei jun meijing zheng lianxi Ling Wancheng’ Guo Weigui: Wang Qishan’s wife and sister in law are US citizens, in contact with Ling Wangcheng. 郭文貴：王岐山妻子妻妹皆美籍 正關係令完成 <http://zh.wenxuecity.com/news/2017/06/16/6318760.html>, last visited: 22 October 2017.

⁴⁴ At least one local businessperson of tycoon stature alluded to me personally that his princeling friends who had been in Hong Kong long enough were all “localized” and valued the city as it was, and would loathe to see it revert to “just another Chinese city”, for otherwise their effort to build safe domicile here beyond the reach of China would come to naught.

⁴⁵ Kwok, B., ‘Tung Chee-hwa secures a ‘Godfather’ deal from Beijing’, *Asia Times Online*, 10 July 2017.

⁴⁶ Lian, Y., ‘Red Capital in Hong Kong’, *New York Times*, 1 June 2017.

⁴⁷ ‘McDonald’s Sells Majority Stake in China Businesses to Citic and Carlyle’, *Fortune*, 9 January 2017.

Real estate development and finance are the two most important pillars of Hong Kong's economy since manufacturing relocated wholesale to the mainland in the 1980s and early 1990s. It appears that the spoils won by the local tycoons from the hands of the departing British corporations in the 1980s are now being lost to this new wave of Red Capital from the north. The wave may turn out to be a tsunami. If the relocation of the legal domicile of the bulk of Li Kashing's corporate empire from Hong Kong to the Cayman Islands in 2015 was indicative of anything, this was it.⁴⁸

4.4 Red Media

The most alarming type of Red Money investment in Hong Kong relates to Hong Kong's once independent media. *The South China Morning Post*, the premier English newspaper in Hong Kong since 1903, was sold to Alibaba, the giant internet retailer of China whose executive chairman, Jack Ma, is widely known to close with China's leadership. The previous owner, tycoon Robert Kuok, had already purged the newspaper's editorial staff of all staff known to be critical of China before selling. Alibaba said the purchase was "fuelled by a desire to improve China's image and offer an alternative to what it calls the biased lens of Western news outlets". After the acquisition, the newspaper promptly offered its online edition free to all readers, a telling sign in an age of financial pressure for print media.

There is also the case of TVB, Hong Kong's oldest and most watched TV station. In 2015, Li Rui-gang, former top party person and bureaucrat in the mayoral office of Shanghai, widely known as 'Murdoch of China', bought controlling shares in TVB and became its vice-chairman. In a highly controversial move in 2016, the government allowed Li to exercise control over TVB even though he remained a person "not qualified to wield a broadcasting license" under Hong Kong's law due to his non-Hong Kong Chinese citizenship. Since then, the political stance of TVB has become no different from CCTV, the state TV of China, a fact that earned for it the nickname CCTVB.⁴⁹

In addition to the outright manipulation of channels of information and platforms of public opinion airing by Red Capital, subtler forms of political control have already come into play. During local legislative elections in 2016, major Chinese SOEs in Hong Kong pressured their employees to vote for pro-Beijing candidates. They may also serve to infiltrate civil society or community activities. Since at least 2014, property insurance companies with Chinese financial backing have won contracts with homeowners' associations in Hong Kong's private residential towers by aggressively cutting the price of their policies. Some of these associations then came under pressure to keep pro-democracy advocates from canvassing in their building complexes.⁵⁰

4.5 Summary

All this is not surprising, as every Chinese enterprise of any significant size is bound by the party's constitution to have integrated a functioning party cell in their management structure. This is openly so in China, and clandestinely so in Hong Kong and elsewhere overseas.⁵¹ When the party controls your pocketbook, it wants to control your votes too. This, perhaps, is the biggest menace that power from the north appearing in the form of money coloured red presents to the people of Hong Kong.

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⁴⁸ Stoner, T., 'Hong Kong billionaire relocating firms to Cayman', *Cayman Compass*, 13 January 2015.

⁴⁹ This is detailed only in the Chinese language edition of Wikipedia: <https://www.wikiwand.com/zh/電視廣播有限公司>.

⁵⁰ 'McDonald's Sells Majority Stake in China Businesses to Citic and Carlyle' *Fortune* 9 January 2017

⁵¹ Lian, Y., 'China, the Party-Corporate Complex', *New York Times*, 12 February 2017, available at: <https://www.nytimes.com/2017/02/12/opinion/china-the-party-corporate-complex.html>, last visited: 22 October 2017.

5. Regressive Democratisation in Hong Kong

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Twenty years after Hong Kong's change of sovereignty, the territory has made little progress towards the universal suffrage promised in the Basic Law. Instead, genuine universal suffrage for Hong Kong has been de-facto ruled out by the current administration in Beijing. In 2017, the Hong Kong population is deeply polarised politically and the party system increasingly fragmented. In the wake of the 2014 student-led protests – popularly called the Umbrella Movement – the future of Hong Kong appears bleak, with an entire generation disillusioned with both Chinese rule and political participation.

5.1 Beijing's Moves at Control

This chapter argues that Beijing's desire to exert political control over the Hong Kong Special Administrative Region (HKSAR) has been a priority since the Handover. China's establishment of legal and governance institutions intended to help facilitate this political control are the direct causes of the political reaction among Hong Kong's youth. The frequent and direct interference of the central government in Hong Kong politics, primarily in interpretations of the Basic Law, has exacerbated tensions between pro-democracy forces and the Communist Party authorities. Shortly after the Handover, two key decisions were made that would significantly shape Hong Kong's political future, with consequences becoming only clear almost two decades later.

The first decision taken in 1997, saw the indirectly elected Provisional Legislative Council replace members of the legislature elected during the Patten era in 1995. In one of its first actions, the new Legislative Council (LegCo) restored the Public Order Ordinance (hereafter called the *Ordinance*), provisions which had been previously repealed to bring local law in line with the International Covenant on Civil and Political Rights. The Ordinance restricts the right of assembly, for example, by requiring police notification and permission for public processions of over 30 people.⁵² The range of the Ordinance offers authorities the possibility for broad application and deterring undesired protests.

The second key decision was the 1999 abolition of Municipal Councils (Urban and Regional Council). Citing improved efficiency, Chief Executive Tung Chee-hwa took away a layer of fully elected, financially autonomous bodies which exercised a reasonable amount of scrutiny of the government.⁵³ In their place, the government promoted the idea that elected District Boards, now renamed District Councils, which hold funds for community services, would relate concerns of citizens and advise the government on district matters. Crucially, District Councils possess very little executive power and act under direct supervision of the Home Affairs Bureau.

The combination of these substantial institutional and legal changes enable the Hong Kong government to steer political development towards a limited and regressive democratisation path. Any challenge to the path – by moving outside of institutions – became increasingly difficult. The analysis that follows outlines the link between the two decisions of the immediate post-handover period, beginning with political reform.

5.2 Control through Democratic Reforms

The extension until 2004 of the directly elected seats in the LegCo to half of the legislature was a real move towards universal suffrage. The same could be said of the abolishing of District Council seats appointed by the Chief Executive in 2015. Yet discussions over the ending of professional interest group seats, or 'functional constituencies', and a direct election of the Chief Executive were

⁵² Brabyn, J., 'The Fundamental Freedom of Assembly and Part III of the Public Order Ordinance', *Hong Kong Law Journal* 32.2 (2002), pp. 271-312.

⁵³ Sing, M., *Hong Kong's tortuous democratisation* (London: Routledge, 2003).

limited by interpretations of the Basic Law by Beijing. In 2010 a breakthrough was achieved when the Democratic Party and the Association for Democracy and People's Livelihood, two of the oldest moderate pan-democratic groups, agreed to support the HKSAR government's reform proposal. In direct negotiations with Beijing, changes to the 2012 LegCo and Chief Executive Elections were agreed upon. The Election Committee for the Chief Executive was enlarged and ten seats to the LegCo were added - five from the geographic constituencies and five from the functional constituencies, the latter returned through election by elected District Council members among themselves. District Councillors also got a larger say in the Election Committee. The proposal passed despite opposition from the Civic Party, the League of Social Democrats and several pan-democratic independent legislators.

Since details of the reform package were not confirmed when it was adopted by the LegCo, this enabled the HKSAR administration to utilise procedural regulations to guarantee the desired outcome of constitutional reform. The preferred method were to regulate and limit nomination opportunities to either the Election Committee⁵⁴ or the five new functional constituency seats. The threshold of 15 votes of fellow District Councillors for the new functional constituency seat nomination made it impossible for general citizens to seek the nomination of Councillors to stand for elections. Furthermore, the new seats would be elected in one territory-wide constituency, which raises election campaign costs significantly and give a clear advantage to pro-establishment parties with sophisticated networks and election machines.⁵⁵

The constitutional reform package granted unprecedented powers on territory-wide politics to the District Council, local level advisory boards, through their strengthened role in elections of the Chief Executive and the LegCo. The reform was a breakthrough for retrograde democratisation. District Councils and functional constituencies give priority to low and local level politics and consequently they become weak institutions. District Councils are vital in Beijing's long-term strategy to control political processes and their outcomes, with local political institutions increasingly resembling those in China. Yet institutional weaknesses and structural advantages for pro-establishment parties appear to no longer guarantee the desired electoral outcomes. Since the 2008 LegCo election the Liaison Office has supported nominally independent candidates, although the 'One Country, Two Systems' prohibits manipulation of the Liaison Office in local elections. In 2016 their election involvement reached new levels and accounted for the creation of a quasi-political group.⁵⁶

5.3 Dealing with the Consequences

These are examples of 'regressive democratisation', a process in which nominally democratic reforms implement structures and institutions in a manner allowing for an unfair bias towards actors inclined to either a slower pace of democratisation or with preference for authoritarian governance. Indirect and direct government intervention from Beijing (i.e. external), its local agents and the Hong Kong administration on behalf of pro-establishment forces further limits the space for democratic parties and renders competition in established political structures increasingly futile. The result is not only the absence of meaningful democratic progress but also a slow roll-back and regression of established democratic practices, political participation and freedoms.

Frustration over regressive democratisation led to the initial rise of radical pan-democratic parties focusing on more confrontational strategies, followed by new social movements eventually culminating in the civil disobedience movements Occupy Central and the Umbrella Movement. The emergence of the Hong Kong localism movement and rapid mainstreaming of its ideas as well as the significant support for the idea of Hong Kong independence among the youth, epitomises

⁵⁴ Since 2012 the Chief Executive is elected by the 1200 people strong Election Committee which is comprised of four sectors, election for Committee membership is not universal and mostly through professional bodies. The 300 votes of the fourth sector come from different councils including LegCo and District Council. After the 2010 reform the District Council subsector is with 117 seats the largest vote block in the Committee, almost triple of its previously 42 seats. Yet only elected District Council members can register as voters, nominate candidates and be nominated as candidates in the District Council subsectors.

⁵⁵ Ma, N., 'Hong Kong's Democrats Divide', *Journal of Democracy* 22.1 (2011), pp. 54-67.

⁵⁶ Kaeding, M.P., 'The rise of 'Localism' in Hong Kong', *Journal of Democracy* 28.1 (2017), pp. 157-171.

the high levels of distrust for the HKSAR and Beijing governments. Anger over decades of broken promises on democratisation and disappointment in the limited achievements of the moderate democrats have fuelled the desire to abandon established political processes and institutions. The rise in mass protests and direct confrontations with police forces are testament to this development.

The government's reaction was to resort to the Ordinance. In the first years of the newly established Hong Kong Special Administrative Region, the Ordinance was seldom applied.⁵⁷ Yet soon, signs emerged that it could be a potential tool to target prominent political activists and demonstrators, especially after radical lawmaker 'Long Hair' Leung Kwok-hung lost his final appeal to a conviction under the Ordinance in 2005.⁵⁸ With the arrival of new social movements around 2010, the Ordinance was seen as a means to regulate and increase the costs of participation for protesters.

After the Umbrella Movement, Beijing's need for control appeared to increase. The patterns established in the immediate post-Handover period aiming to limit institutional access are now more openly practised. Limits are imposed either through procedures (the banning of *localist* candidates), Basic Law interpretations (disqualification of lawmakers) or the governments push for deterrent sentencing of activists and protestors under the Ordinance. The fight for genuine universal suffrage is replaced for a fight to preserve Hong Kong's freedoms and liberties. Yet with institutional paths blocked and protest costs rapidly rising, it remains to be seen what paths might be taken.

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⁵⁷ So, A., 'Social Protests, Legitimacy Crisis, and the Impetus Toward Soft Authoritarianism in the Hong Kong SAR', *The first Tung Chee-hwa administration: the first five years of the Hong Kong Special Administration Region*. Edited by Lau Siu-Kai. Hong Kong: The Chinese University Press, pp. 399-418.

⁵⁸ Chan, A., 'Constitutional Adjudication in post-1997 Hong Kong', *Pacific Rim Law and Policy Journal*, 15. pp. 627-682.

6. Human Rights in Hong Kong

Benedict Rogers

Conservative Party Human Rights Commission

Twenty years after the handover of Hong Kong to China, basic freedoms in the territory are increasingly threatened, rule of law undermined, and the ‘one country, two systems’ framework steadily eroded. In 2017, the strangulation of Hong Kong’s human rights was epitomised by the court ruling to disqualify democratically elected members of the Legislative Council (LegCo) for failing to take their oaths properly, and the decision by the Court of Appeal to jail three student leaders, Joshua Wong, Nathan Law and Alex Chow, for their leadership of the Umbrella Movement three years previously. The Umbrella Movement – the largest protest in Hong Kong’s recent history and one of the most peaceful mass demonstrations anywhere in the world – has come to symbolise the struggle for democracy in Hong Kong.

6.1 *The Pillars of Freedom*

In a joint submission to an inquiry by the Conservative Party Human Rights Commission, Hong Kong’s former Chief Secretary Anson Chan and the founder of Hong Kong’s Democratic Party Martin Lee argued that “precious rights and freedoms guaranteed under ‘one country, two systems’, such as freedom of the press, of publication and of academic thought, are being chipped away”.⁵⁹ The Hong Kong government, argue Mrs Chan and Mr Lee, “has shown itself completely powerless to uphold the fundamental rights guaranteed ... in the Basic Law”.⁶⁰ Professor Victoria Tin-bor Hui, Associate Professor in Political Science at the University of Notre Dame, agrees, concluding that “most pillars of freedom have been increasingly hollowed”.⁶¹

A new film, *Ten Years*, depicts Hong Kong’s future based on recent trends and “paints a grim picture of Hong Kong ten years into the future, increasingly under Central Government’s influence and control”. Press freedom and academic freedom are particularly threatened. In 2002, Hong Kong ranked at 18th in the Reporters Without Borders’ world press freedom index; by 2015, this had sunk to 73rd.⁶²

The University of Hong Kong’s rejection of pro-democracy academic Professor Johannes Chan Man-mun as its Pro-Vice-Chancellor, despite the recommendation of the selection committee, is just one example of the erosion of academic freedom. The proposed Moral and National Education (MNE) curriculum, which Joshua Wong and his organisation *Scholarism* campaigned against, emphasised the need for students to demonstrate loyalty to the Chinese Communist Party, an erosion of free-thinking.

Although the erosion of Hong Kong’s freedoms has been occurring slowly over the past two decades, the situation has deteriorated dramatically in the last three years. In 2014, China decided to renege on its promise to allow genuine multi-party democracy and universal suffrage in elections for the Chief Executive of Hong Kong in 2017, sparking the ‘Umbrella Movement’, which saw thousands of protesters on the streets for 79 days in 2014. The police responded with tear gas, beatings and arrests. Martin Lee described in *The New York Times* his own experience:

At 76 years old, I never expected to be tear-gassed in Hong Kong, my once-peaceful home. Like many of the other tens of thousands of calm and non-violent protesters in the Hong Kong streets ... I was shocked when the pro-democracy crowd was met by throngs of police officers in full riot gear, carrying weapons and wantonly firing canisters of tear gas. After urging the crowd to remain calm under provocation, I got hit by a cloud of the burning fumes. The protesters persevered. They ran away when gassed, washed their faces and

⁵⁹ ‘The Darkest Moment: The Crackdown on Human Rights in China 2013-2016’, *The Conservative Party Human Rights Commission* (2017).

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² ‘Media freedom in free fall 20 years after Hong Kong returned to China’, *Reporters Without Borders*, 27 June 2017.

returned with raised hands. But the police continued to escalate the crisis. Their aggressive actions hardened the resolve of Hong Kongers, many of them too young to vote, to defend our freedoms. These include the long-promised right to elect our leader.⁶³

6.2 Illegal Extradition

At the end of 2015, five Hong Kong booksellers, who published and sold books critical of the Chinese Communist regime and its leaders, disappeared. One, Lee Po, was a British national believed to have been abducted by Chinese agents from Hong Kong and taken to mainland China. Gui Minhai, a Swedish national, was abducted from Thailand. The other three were detained while visiting mainland China. In its 2015 annual report on Hong Kong by the European Commission's High Representative for Foreign Affairs and Security Policy to the European Parliament and the Council, the European Union notes that "the functioning of the 'one country, two systems' principle was called into serious doubt" by these abductions:

The EU considers the case of the five book publishers to be the most serious challenge to Hong Kong's Basic Law and the 'one country, two systems' principle since Hong Kong's handover to the PRC in 1997. The case raises serious concerns about respect for human rights and fundamental freedoms ... The case has potentially lasting implications for Hong Kong's rule of law.⁶⁴

Hong Kong's Basic Law guarantees basic human rights. Anson Chan and Martin Lee state that the abductions were "a clear breach of ... the Basic Law".⁶⁵ The Joint Declaration between the United Kingdom and China was intended to guarantee that "no Hong Kong resident would have to fear a midnight knock on the door". The reality now, they add, is that "what happened to Lee Po can happen to any Hong Kong resident whom the Mainland authorities wish to silence or bring before their own system of 'justice'. In short, none of us is safe". The local government showed that it not only turns a blind eye to extra-legal behaviour, but bends its knee to Beijing, as was seen when the new Chief Executive, Carrie Lam, said it was not appropriate to challenge the central government over these abductions.

The rule of law and the independence of the judiciary in Hong Kong is also under threat. In 2016, senior retired Hong Kong judge, Judge Kemal Bokhary, concluded that his warning in 2012 of "a storm of unprecedented ferocity" facing the judiciary has now come about, noting that his "fears have been realised, much as I wish they were not".⁶⁶ There are, he asserted, "very serious problems now ... grave challenges". If the situation continues, "the things which were second nature to you and I may recede to the back row where judicial independence is eroded".⁶⁷ In 2014, China announced in a White Paper on The Practice of One Country, Two Systems that judges in Hong Kong are mere "administrators" subject to a "basic political requirement" to love the country and "subject to oversight by the central government".⁶⁸ It declared that Beijing has "comprehensive jurisdiction over Hong Kong" - instead of "the high degree of autonomy" provided for in the Sino-British Joint Declaration and Hong Kong's Basic Law.⁶⁹

6.3 Using the Law to Suppress Students

In elections to the Legislative Council in September 2016, the pro-democracy camp won 30 out of 70 seats. Several activists from the Umbrella Movement were elected, including the youngest ever legislator in Hong Kong, 23-year-old Nathan Law. There was a brief moment of hope. It was then snatched away when the government decided to use the courts to disqualify six newly-elected legislators for failure to take their oaths properly. The National People's Congress issued a

⁶³ Lee, M., 'Who will stand with Hong Kong?', *The New York Times*, 3 October 2014.

⁶⁴ European Commission and European External Action Service Issue 2015 Annual Report on Hong Kong Special Administrative Region', 25 April 2016.

⁶⁵ 'The Darkest Moment: The Crackdown on Human Rights in China 2013-2016', *The Conservative Party Human Rights Commission* (2017).

⁶⁶ 'A Hong Kong judge's warning', *The Wall Street Journal*, 21 April 2016.

⁶⁷ *ibid.*

⁶⁸ 'The Practice of the "One Country, Two Systems Policy in the Hong Kong Special Administrative Region', *Information Office of the State Council, the People's Republic of China*, June 2014.

⁶⁹ *ibid.*

reinterpretation of the Basic Law, amending a local ordinance, which criminalised their acts retrospectively. Such a reinterpretation and the subsequent punishment threaten the freedoms guaranteed by the Basic Law and is counter to most interpretations of international law.

On top of their disqualification, the Legislative Council is now demanding that these legislators repay all their salaries, staff salaries and other expenses incurred during their time in office – amounting to millions of Hong Kong dollars. It is obvious that the government is trying to bankrupt them and thereby prevent them contesting elections in the future, gradually squeezing any remaining space for the democracy movement.

6.4 Summary

Thirteen others were jailed in August for unlawful assembly, and still others now await trial. In previous months they had already endured sustained attack, including physical assault and being attacked by pro-Beijing media as “race traitors”⁷⁰. The crackdown continues. “In the past,” said student activist Derek Lam, “when we chant ‘release political prisoners,’ we’re referring to [those in China] ... but now it’s Hong Kong”.⁷¹

Yet the determination of these young activists, however, remains unbowed. In a series of tweets immediately after his sentencing Joshua wrote:

You can lock up our bodies, but not our minds! We want democracy in Hong Kong. And we will not give up. They can silence protests, remove us from the legislature and lock us up. But they will not win the hearts and minds of Hong Kongers. Imprisoning us will not extinguish Hongkongers’ desire for universal suffrage. We are stronger, more determined, and we will win.

That outcome remains to be seen, and will depend both on how determined Hong Kong people generally are to protect their way of life, and how committed the international community is to supporting them.

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⁷⁰ Ng, E., ‘Race Traitors: Pro-Beijing Papers Accuse Democracy Figures of Inviting US to Interfere in Hong Kong’, *Hong Kong FP*, 4 May 2017.

⁷¹ Rogers, B., ‘Joshua Wong, Alex Chow, Nathan Law: Hong Kong’s Icons of Democracy and the Struggle for Freedom’, *Hullington Post*, 21 August 2017.

7. Chinese Nationalism and Hong Kong

Edward Leung

Hong Kong Indigenous

The Chinese state uses nationalism to create legitimacy in modern China. This ruling idea glues different ethnic groups under one entity, the ‘Chinese Nation’ (*zhonghua minzu*). This modern notion was originally coined by Liang Qichao and adopted by nationalists in the late Qing dynasty, so as to bring China back to the competitive global stage.⁷² As time goes by, following the death of Mao and later the dissolution of the Soviet Union, Chinese Nationalism has revived and replaced Maoism and Marxism-Leninism as the most influential dominant ideology of the People’s Republic of China (PRC).

7.1 Narratives of Nationalism

China’s nationalist narratives are comprised of two key elements, namely civilisation and humiliation. On the one hand, the assertion of “5000 years of glorious Chinese civilisation” constitutes national pride, on the other hand, the education of “100 years of nation humiliation” invokes national shame. Both psychologies are necessary for telling a national tale of the rise and fall of ‘Middle Kingdom’ (*zhongguo*) and, above all, another rise today. To seek legitimacy, one has to prove its ability to get rid of national humiliation.⁷³ Since initiating economic reforms and joining the World Trade Organization (WTO), China shocked the world by becoming the world’s second largest economy. The regime’s nationalist policies encompass tropes like “the Chinese Dream” or “the Great Rejuvenation of the Chinese Nation”, which both embody ideas of national salvation.⁷⁴ As China has become an assertive player in global politics, one might surmise that Beijing had stood up. Nonetheless, one need only recall that Chairman Mao Zedong similarly claimed that the “Chinese People” had stood up in 1949.⁷⁵

If the Opium War marks the start of “the Century of Humiliation” (*bainian guochi*), then Hong Kong epitomizes China’s shame. Twenty years after the Handover, during his visit to Hong Kong, Xi Jinping reiterated the “deep suffering” of “the Chinese Nation” and the defeat of China’s “800,000-strong army” during the Qing Dynasty by a “mere 10,000 troops” of Britain.⁷⁶ These tropes are typical of a Chinese nationalist narrative – opium poisoning, foreign invasion, suffering, occupation – with the Communist Party of China (CPC) bringing China’s salvation. On the 1 July in 1997,⁷⁷ the transfer of sovereignty over Hong Kong signified the triumph of the PRC over British imperialism in the eyes of Chinese nationalists. They celebrate Hong Kong’s decolonisation being joined with the Motherland under the framework of “One Country Two Systems”.⁷⁸ While promising this slogan, Beijing has in fact sought to impose one identity on two peoples.

7.2 Limits to China’s Nationalist Narratives

The above nationalistic discourse might sound potent to many Chinese nationalists. However, stability, prosperity, freedom, human rights and rule of law are more concrete than patriotism to many people who spent most of their lives living in Hong Kong before 1997, given that many of

⁷² Chu, H. and Peter Zarrow, ‘Modern Chinese Nationalism: The Formative Stage’, *Exploring Nationalisms of China: Themes and Conflicts* (Westport, CT: Greenwood Press, 2004), pp. 3-26.

⁷³ Callahan, W.A., ‘National insecurities: Humiliation, salvation, and Chinese nationalism’, *Alternatives* 29.2 (2004), pp. 199-218.

⁷⁴ Carrie Gracie, ‘The credo: Great rejuvenation of the Chinese nation’, *BBC*, 7 November 2014, available at: <http://www.bbc.com/news/world-asia-china-29788802>, last visited: 22 October 2017.

⁷⁵ Zedong, M., ‘The Chinese People have stood up!’, in *Selected Readings from the Works of Mao Tse-tung, vol. V* (Beijing: Foreign Languages Press, 1977), pp. 15-18.

⁷⁶ ‘Full text of President Xi Jinping’s speech on ‘one country, two systems’ and how China rules Hong Kong’, *South China Morning Post* (Hong Kong), 1 July 2017, available at: <http://www.scmp.com/news/hong-kong/politics/article/2100856/full-text-president-xi-jinpings-speech-one-country-two>, last visited: 22 October 2017.

⁷⁷ ‘Edited extracts from Prince Charles’s travel journal’, *Telegraph*, 23 February 2006, available at:

<http://www.telegraph.co.uk/news/uknews/1511203/Edited-extracts-from-Prince-Charless-travel-journal.html>, last visited: 22 October 2017.

⁷⁸ A complete decolonisation is usually defined as the exercise of the colony’s right to self-determination. Since Hong Kong was removed on the United Nations’ list of colonial territories in 1972, the implementation of universal suffrage can be regarded as the internal right to self-determination, as an important step to decolonisation.

them are descendants from mainland Chinese. Before the Sino-British Joint Declaration was signed by the British and the PRC in 1984, a few surveys of public opinion on the future of Hong Kong beyond 1997 showed that the ‘status quo’ was preferred by a majority of those polled; some preferred for Hong Kong to become an ‘entrusted territory under UN’; while others preferred ‘reunification’ with the PRC.⁷⁹ Emigration after 1984 further supports this view. Beijing hoped that nationalism would soften the shift for Hong Kong’s citizens as they moved from a high standard of living under the British, to a starker life under a communist regime.

Hong Kong’s concerns grew particularly stark, especially after the hopes for a democratic China were crushed by tanks at Tiananmen Square in 1989. Further emigration peaked after the June Fourth crackdown.⁸⁰ However, in order to restore the confidence among Hongkongers, including many Hong Kong-based Chinese nationalists,⁸¹ the Basic Law was drafted and promulgated according to the Joint Declaration in 1990. The three fundamentals of this de facto constitution, included “One Country Two Systems”, “Local Rule”, and “High Autonomy” were promised unchanged for 50 years.⁸² Despite Beijing’s strong misgivings, the idea of ‘Democratic Reunification’ gradually became a principle among Hong Kong’s civil society and those who hoped to achieve universal suffrage for the positions of the Chief Executive and the Legislature – as promised in the Basic Law.

7.3 Repressing Hong Kong

After 1989, the pursuit of democracy within the post-97 constitutional arrangements was the only strategy available to those Hongkongers who chose to stay. If democracy could flourish within the Chinese territory after 1997, there would be enough safeguards against the abuse of government power. For a time, the thinking was that Local Rule would be compatible with Beijing’s dominant ideology, Chinese Nationalism, since many pro-Democracy forces supported Chinese sovereignty over the city. It was not until 1 July 2003, when LegCo sought to implement National Security Law (Article 23 of the Basic Law), that this relationship broke down. The repressive act provoked nearly half a million people to demonstrate on the street of Hong Kong with Chinese nationalism failing to hold people in check. On a day meant to celebrate the Handover, Hong Kong’s citizens succeeded in overturning Article 23, showing Beijing that nationalist tropes were not enough to control the city.

The most controversial passages in Article 23⁸³ sought to criminalise “subversion against the Central People’s Government”; “foreign political organizations or bodies...conducting political activities in the Region”; and “political organizations or bodies of the Region...establishing ties with foreign political organizations or bodies”. Drafted after the 89 Democracy Movement (89 *minyun*), the CCP had to contend with large-scale dissent and political mobilisation against this anti-subversion law. Afterwards, Beijing started to abandon the non-intervention policy and adopted state-building nationalism in Hong Kong as political, socio-economic, and ideological incorporation strategies for centralization.⁸⁴

7.4 Growing Unrest

With movement on universal suffrage frozen since 2007, civil strife between the government and civil society has become inevitable. As far as Hongkongers are concerned, accountable government elected by the people is pivotal to good governance. By contrast, Beijing sees Party-mandated control over the city as pivotal to good governance. Problematically for Beijing, the pro-democracy

⁷⁹ Scott, I., *Political Change and the Crisis of Legitimacy in Hong Kong* (London: Hurst, 1989), p. 180.

⁸⁰ ‘A Graphic Guide on Hong Kong’s Development (1967-2007)’, *Census and Statistics Department, Hong Kong Special Administrative Region, People’s Republic of China*, available at: <http://www.statistics.gov.hk/pub/B1010005012008XXXXB1300.pdf>, last visited: 19 October 2017.

⁸¹ Newspaper Advertisements on the Democratic Movements of China ‘89’, *Hong Kong Alliance*, last modified May 1990, available at: <https://archive.org/details/1989hkhistory>, last visited: 22 October 2017.

⁸² ‘Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China’, available at: http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf, last visited: 19 October 2017.

⁸³ *ibid.*, p. 19.

⁸⁴ Fong, B.C.H., ‘One Country, Two Nationalisms: Center-Periphery Relations between Mainland China and Hong Kong, 1997-2016’, *Modern China* 43.5 (2017), pp. 523-556.

camp briefly began winning majority votes in direct elections. Whereas the ruling from NPCSC is supreme and authoritative, universal suffrage in 2007/08 and 2011/12 were all easily denied by Beijing. Although a slight political reform was once passed in 2010 under Donald Tsang, dissatisfaction has accumulated because of the bill itself and other controversial decisions, including the “Express Rail Link” construction, Moral and National Education (MNE), and the rejection of the HKTv licence. While the hope of universal suffrage should have been achieved in 2017, Hongkongers desperately watched this historic opportunity fade under China’s rule. Civil disobedience became a hot topic among democracy advocates, after a Hong Kong University (HKU) legal scholar, Dr Benny Tai, introduced this idea to the general public in 2013. Notwithstanding this mobilisation in Hong Kong’s civil society, Beijing was ready to unleash its power.

Given the decline in Hongkongers who identify as Chinese since 2008, especially among the young generation, Beijing has sought to introduce Official Chinese Nationalism⁸⁵ in a number of other ways. In 2012, after a government-funded text book describing the Communist Party of China (CPC) as a “united, progressive, and selfless ruling party”. The compulsory nature of Moral and National Education curriculum triggered large demonstrations, including those led by Joshua Wong.⁸⁶ Although the subject was halted in the end, a series of rulings from Beijing embodying its Official Nationalism policy was inexorable. In 2014, two contentious behests were made: the first was the white paper on “The Practice of the One Country Two Systems”,⁸⁷ which reiterated the comprehensive and supreme authority of Beijing over Hong Kong’s executive, legislative, judiciary, and their responsibilities to be patriotic; the second was the National People’s Congress Standing Committee’s (NPCSC) “Ruling 831”,⁸⁸ which required all Chief Executive candidates to “love the Country, love Hong Kong”, as a mean of furthering Chinese control over candidates for that office. As a result of Beijing interference, large-scale protests took to the streets for 79 days. Known as the Umbrella Movement, these protests were sadly insufficient for turning the tide. Two years after the protests, Hong Kong has been undergoing a democratic recession. Political screening has become a usual practice in LegCo election 2016, as candidates with pro-independence views and even lawmakers duly elected were blatantly disqualified, following another interpretation of the Basic Law.⁸⁹ Hongkongers’ political rights were violated in the name of law and national security.

7.5 Summary

All in all, national humiliation, as the negative psychology of Chinese Nationalism, gives CCP a role to put forward its unchallengeable plan of national salvation. When its economic and military development continue, the huge labour force and patriotic sentiments behind will strengthen PRC as never before. If one is to understand China’s unlimited power: to manipulate domestic politics by issuing a call to arms on behalf of Chinese nation; and to break the international norms in the way of disavowing agreements like the Sino-British Joint Declaration, Hong Kong under China’s rule is certainly a window to gaze through.

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⁸⁵ Anderson, B., *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006), pp. 83-112.

⁸⁶ Jacob R. and Enid Tsui, ‘Hong Kong: Class action’, *Financial Times*, 17 September 2012, available at: <https://www.ft.com/content/c79facc0-00a9-11e2-9dfe-00144feabdc0?mlq5j~e5>, last visited: 22 October 2017.

⁸⁷ ‘The Practice of the ‘One Country, Two Systems’ Policy in the Hong Kong Special Administrative Region’, *The Information Office of the State Council, The People’s Republic of China*, last modified June 2014, available at: http://english.gov.cn/archive/white_paper/2014/08/23/content_281474982986578.htm, last visited: 22 October 2017.

⁸⁸ ‘Decision of the Standing Committee of the National People’s Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016’, Tenth Session of the Standing Committee of the Twelfth National People’s Congress, last modified 31 August 2014, available at: <http://www.2017.gov.hk/filemanager/template/en/doc/20140831b.pdf>, last visited: 22 October 2017.

⁸⁹ In total, five candidates were barred from running: Nakade Hitsujiko, Alice Lai, Andy Chan Ho-tin, James Chan Kwok-keung and Edward Leung. After the election, six elected Legislators were disqualified: Sixtus Leung, Yau Wai-ching, Edward Yiu, Leung Kwok-Hung, Lau Siu-lai, and Nathan Law.

8. Hong Kong's Frail Political Freedoms

Nathan Law

Demosisto

(Written in Tong Fuk Correctional Institution)

In August, 16 social activists in Hong Kong – including Joshua Wong, Alex Chow, and myself – were jailed following two sentencing reviews that were requested by the Department of Justice. The court rulings aroused huge controversy, and now threaten public confidence in the fragile political freedoms enjoyed by Hong Kong's citizens.

This short article attempts to describe the quasi-authoritarian landscape of Hong Kong, following the inauguration of the new Chief Executive, Mrs Carrie Lam. Restrictions that have been put on institutional space as well as civic liberties make the active participation of opposition actors increasingly difficult. During my two months in captivity, I have realised a simple truth – political freedoms in Hong Kong are being lost more swiftly than at any other period in recent history.

8.1 A Flagrant ICCPR Violation: Limiting Freedom of Expression, Assembly and Election

The heavy jail terms handed down by the Department of Justice (DOJ) mean that young activists like me will be barred from standing for public office for five years, and thus eliminated as opposition voices within the legislature. This represents a serious breach of democracy, by depriving the people of their right to elect those who govern them. I am also a victim of this government's oppression.

In the past, the prosecution of 'unlawful assembly' under Public Order Ordinance, targeted criminal activities by gangs. Now, these colonial-era laws have become the primary tool in the suppression of Hong Kong's democratisation. The cost of civil disobedience will increase as participants must now expect to be burdened not only with community service hours, but months in prison. As a result, the Ordinance has been repeatedly criticised by the UN Human Rights Committee for failing to fully meet the standards of international human rights law.

Dozens more who have played a prominent role in the Umbrella Movement may also face imprisonment in the near future, including Professors Benny Tai and Chan Kin Man, along with the 73-year-old Reverend Chu Yiu Ming, who co-initiated Occupy Central. These prosecutions would undoubtedly deter citizens from taking part in demonstrations and peaceful resistance in the future.

In light of continuing political suppression, the groups to which these jailed activists belong, together with other democratic lawmakers, staged a mass rally on 1 October 2017, on China's National Day. The organisers, including *Demosisto*, *League of Social Democrats*, *Students Fight for Democracy*, *North East Support Group* and *Civil Human Rights Front*, argue that it is high time that opposition parties unite.

Political freedoms are being stripped, as the government arbitrarily removed six democratically elected lawmakers from office this summer. During my tenure in LegCo, progressive democratic lawmakers made a few successful attempts to question the legality of controversial spending. However, in the current LegCo, a simple pro-government majority can be easily obtained to force through new rules. Two new battles have already started, with many more to come. First of all, the pro-Beijing camp is keen to restrict the 'checks-and-balances' power of legislators. This is likely to include limiting the number of non-binding motions proposed by each lawmaker on an agenda item to one, and/or barring lawmakers expelled by the chairman for inappropriate behaviour from joining the next session on the same day. Moreover, the motion to endorse another controversial policy, the co-location arrangement is expected to pass comfortably despite public opposition.

8.2 The International Community Should Monitor Implementation of ICCPR

According to the Overseas Trade Statistics published by the British government, China and Hong Kong both have strong trading ties with the UK. In the first nine months of 2016, the value of imports from China was £28 billion, while the value of exports to China was £9.9 billion. As for Hong Kong, imports to UK represented £7.4 billion, while exports to Hong Kong valued £4.8 billion. Despite the scale of the figures, UK officials should not see a large trade volume as a deterrent which can hold China to a better international human rights standard. Instead, they should see economic exchange as a bargaining chip to urge China to make more commitments, so that Beijing observes the 1984 Sino-British Joint Declaration and improves the status of human and political rights.

It was a deeply worrying sign when Mr Benedict Rogers, a veteran British human rights activist and contributor to this volume, was denied entry to Hong Kong earlier this month. This was an alarming signal that Chinese authoritarian inclinations to clamp down on political freedoms will only extend if they are left unchecked, in time affecting more and more foreign citizens. This is also a sign of serious suppression of human rights, further eroding the framework of ‘one country, two systems’, and a breach of the International Covenant on Civil and Political Rights (ICCPR).

In December 2014, when the UK Foreign Affairs Committee was refused entry into Hong Kong, the House of Commons had a debate over the issue. According to debates between MPs at the time, it seems to me that the “Mother of Parliaments” agrees that the UK has a duty to monitor the implementation of the Joint Declaration.

The British Foreign Office’s latest six-monthly report on Hong Kong insists that the ‘One Country, Two Systems’ framework is in good shape. To those of us in Hong Kong, that was a rather frustrating remark. As political suppression here intensifies, London must reevaluate its past statements on Hong Kong, and make fairer comments on our democratic endeavour. As a signatory of the Joint Declaration of 1984, the UK should, through parliamentary debates and hearings, address the situation in Hong Kong, to ensure the international treaties on civic and political rights that the colonial government signed previously, are not being violated.

8.3 Keep Faith in the Journey to Democracy

In an era of authoritarian resurgence, civil liberties and democracy are on the back foot. We must remain vigilant, and continue to monitor and safeguard the rights and freedom we have fought so hard for. Likewise, we cannot obtain genuine rule of law without true democracy. The fact is, we need democracy. We need a structure which can guarantee a monitoring mechanism. We need the reassurance for the wellbeing and welfare of Hong Kong’s people. Unfortunately, faith in these ideas is weak right now, and this hinders democratisation. We need to make political participation meaningful again, so that the public may find personal fulfilment, instead of being trapped in desperation and cynicism. We want to empower the people, so they too may speak on their own behalf, not just through the mouthpiece of someone for whom they didn’t even vote. This empowerment can help build more favourable conditions towards full democracy.

Nathan Law is the Chairman of Demosisto, a political party fighting for rights and democracy in Hong Kong.

9. Conclusion

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This report sets out to take stock of Hong Kong's status quo two decades after the Handover of sovereignty from the UK to China. The findings are an inevitable snapshot of the current situation since there are still thirty more years until the end of the Hong Kong Special Administrative Region (HKSAR). Yet is remarkable to observe how much the tone has changed over the past ten years. At the tenth anniversary of the handover, the consensus in the international community was that nothing had changed since the days of British rule. In 2017, there are severe concerns that the guarantees given under the 'one country, two systems' principle are being fundamentally undermined. This poses the current government of the United Kingdom with an uncomfortable dilemma: quietly push for incremental changes in China's behaviour or do nothing.

The report makes it clear that the central government in Beijing is directly intervening in the territory, resulting in the undermining of Hong Kong institutional strength and autonomy, the bedrock of its success as an international financial centre. The accounts provided here illustrate that interventions in the economic, political and legal sphere have created a situation in which Hong Kong's autonomous status has deteriorated significantly over the past years.

We began by illustrating the pre-Handover conditions and motivations of the UK. After realising that continued administration over the former crown colony would not accepted by the Chinese, the British government's primary aim was to secure Hong Kong's institutions and autonomy, the bedrock of its financial success. Democratic reforms, though introduced late, attempted to strengthen the territory's institutions. The following chapters illustrate the slow unravelling of the situation in 1997 with clear patterns of Chinese intervention aimed at Hong Kong's institutions. It is fair to say that without Hong Kong, China would not have modernised the way it did, for the territory was crucial for China's remarkable economic rise over the past decades. Yet after the handover, Hong Kong's special status is under threat. Integration with mainland China makes Hong Kong increasingly economically dependent on the mainland. Hong Kong's business elite, once dominant throughout Asia, are under increasing political pressure to work within Chinese national objectives.

At the heart of Hong Kong's special status and autonomy, is its independent judiciary and respect for the rule of law. The Basic Law (BL) guarantees judicial independence in Hong Kong, a concept alien to the one-party state now exercising sovereignty over the HKSAR. This inherent conflict explains the pattern of attacks and challenges to the judicial system, slowly undermining the rule of law, freedoms and human rights in the territory. Beijing's priority is to incrementally increase control over Hong Kong, motivated by ideas of territorial integrity and the fear of foreign influences, central to its internal nationalist discourses. Hence, prospects for genuine universal suffrage are dim. Instead, political institutions are perverted to represent the illusion of democratic progress while the space for dissenting voices is steadily narrowed. The results of these attacks on Hong Kong's institutions is a weakening of its autonomy, growing frustration, and hopelessness among its citizens and civil society.

From his prison cell Nathan Law calls upon us to keep faith and go beyond despair, while posing two challenging questions. What can the people of Hong Kong do to shape their city's political life; and how can the UK help in this process, in line with its moral obligations? We have not sought to answer these questions, but we do believe that the continued asking of them, will help advance the rights and freedoms of the people of Hong Kong. We hope that one day, such rights and freedoms will also be more widely available to the people of China.

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The Asia Studies Centre attempts to provide an in-depth understanding of the structural shifts, regional complexities, and historic tensions that exist alongside the tremendous economic and social growth that traditionally characterize the “rise of Asia”. Post-Brexit Britain must develop a foreign policy posture for the region that navigates British economic interests and British cultural and political values on the one hand, while maintaining strong support for regional liberal democracies and international law on the other.



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