

HONG KONG: THE STEADY EROSION OF FREEDOM

EDITED BY EVAN FOWLER AND DR JOHN HEMMINGS



DEMOCRACY | FREEDOM | HUMAN RIGHTS

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“These 7 essays are a timely and valuable reminder that “Two Systems in one Country” are subject to constant attempts by the Chinese authorities to erode Hong Kong’s freedom and enjoyment of the Rule of Law. Britain is not just a spectator. Britain, as a signatory of the Treaty has both a legal right and a moral obligation to do what we can to ensure that the people of Hong Kong fully enjoy the rights they were promised by the Chinese Government.”

Sir Malcolm Rifkind

Foreign Secretary 1995-97, Chairman of the Intelligence and Security Committee of Parliament 2010-2015

Foreword

Sir Richard Ottaway

Chairman of the Foreign Affairs Committee, Parliament, (2010-2015)

As we mark the 30th anniversary of the crackdown on China's democracy movement in 1989, it is a reminder of the United Kingdom's responsibility to Hong Kong. While the city is no longer a colony, the UK and Hong Kong have a special relationship, tied together by a long history, marked by commercial success and the development of a unique culture – with strong Chinese cultural characteristics, moulded by British rule-of-law and custom.

In 2014, I presided over an enquiry into the UK's relationship with Hong Kong as Chairman of the House of Commons Foreign Affairs Committee. We were then marking 30 years from 1984, when the UK and People's Republic of China signed the Sino-British Joint Declaration, which saw the UK transfer the sovereignty of the city to Beijing and all its inhabitants. It was an unhappy occasion for many in the city, who had fled communism, and British negotiators extracted a promise from China to maintain a "One country, two systems" principle, which would allow China the formality of rule, while allowing the preservation of liberties, enjoyed by Hong Kongers.

As a means of monitoring the agreement, the UK Government monitors the implementation of principles established in the treaty through six monthly reports, carried out the Foreign and Commonwealth Office. The reports – criticized by many as increasingly irrelevant and toothless – still remain the paramount means by which the Government can transmit its position on key issues to the people of Hong Kong and the Government of China. The two have not always seen eye-to-eye, and the banning of the Foreign Affairs Committee from visiting Hong Kong created a huge storm, leading to an emergency debate in the House on the 2nd of December, 2014.

My experience as chairman then, rather mirrors that of many of the authors of this report. China makes its position known – often arbitrarily – and then begins to squeeze out any other possible interpretation or action. Using quasi-legal terminology and restrictions, communist party lawfare, it destroys the middle ground and space for discussion. There can be, as we now know, only one perspective, one viewpoint, and one truth. That is the same voice that led to Chinese soldiers firing upon their own citizens 30 years ago this week all around Beijing. It was an act that must not and should not be forgotten when the UK considers its obligations to the people of Hong Kong.

I commend the authors of this compendium for writing with many voices about the truth of what they see happening in a city they love. I, for one, am grateful that their voices have not yet been silenced, though the historic trends are troubling. However, in the end, I think and believe that human dignity and the right to make choices about one's life should trump the mainland's desire to rule at all costs in breach of the 'one country, two systems' agreement. Let this be the watchword of those who track Hong Kong's fate from a distance and from those of us here, in the UK, where there are many friends of the people of Hong Kong.

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Introduction

Dr John Hemmings *The Henry Jackson Society*

The search for liberty has been a historic process for human individuals and societies. For the Chinese nation, it has continued on and off for centuries, ranging from the downfall of the Mongolian-Yuan Dynasty to the establishment in 1912 of the Republic of China (ROC). Like all great societies, it has been marked by the contest between freedom from want and freedom of action. The story of human governments is often the reconciliation or trade-off between those two freedoms; certainly it has been the dominant one for the Chinese Communist Party which has thus far existed for 98 years and ruled for 74. In that time, it has starved a sizable portion of its population to death (36 million according to one recent Chinese account¹), while also dragging the country into modernity, and raising some 850 million out of poverty². The record of all states is a mixed bag; the record of the Chinese Communist Party – the sole ruler of China over the past 74 years – is more mixed than most.

As we commemorate the 30th anniversary of the Tiananmen Square Massacre, it is tempting to ask “what if?”. What if the 38th, 63rd, and 28th Armies of the People’s Liberation Army had refused to leave their barracks that June evening? What if they had refused to fire upon the crowds – and instead joined them as occurred in their fellow Soviet neighbour only four years later, when Russian soldiers dismounted their tanks in front of the White House? What if the small clique of China’s leaders had supported the modest reformist agenda put forward by Hu Yaobang instead of deposing him? His death, shortly after, was the inspiration of the original protests. What if instead of trying to exert more and more self-serving control over the Chinese citizen body, the CCP realized that a loftier goal would be to confer political rights and liberties upon its citizens? The prospect of a fairer Chinese state has galvanized and inspired Chinese patriots for many a year, and doubtless will continue to do so as long as its leaders continue to measure political success by the amount of control they exert on their fellows.

At times, the American Founding Fathers’ impact on political philosophy seems underrated. Their writings and thoughts are, after all, have been subsumed into the origins story of the American nation. However, they set an incredible precedent by carefully considering the nature of power between the governed and governors, and eschewed personal gain for principles that would guarantee liberties for the greater whole. George Washington’s return to private life – in the shadow of Lucius Cincinnatus – is emblematic of a reverence for republican virtue³. While the successes and failures of their intellectual efforts are written in US history, the American Revolution had its roots in Roman, French, and British republicanism, which sought to replace the tyranny of the few, with the legitimacy of rule-by-the-many. It is a system that we are still wrestling with today, but one that ultimately remains a foundational goal for many outside the Western world. Hong Kong is one of those places where liberty is viewed in the same way and with the same enthusiasm as was first felt by those early British colonists.

Hong Kong’s search for political rights has some broad similarities with that of the US in 1776, but there are serious differences. For one thing, it did not achieve independence from the British through force of ideas and arms, but rather through a great power transition and diplomacy, which saw London secede the territory back to Beijing. From a Chinese perspective, the Handover was just, the rightful return of a land stolen by an imperial aggressor. However, this sense of justice was felt less keenly in Hong Kong. After all, Britain, the heart of the Empire

¹ Yang Jisheng, *Tombstone: The Great Chinese Famine, 1958–1962*, (New York: Farrar, Straus and Giroux, 2012).

² Overview: *The World Bank in China*, available at: <https://www.worldbank.org/en/country/china/overview> (last visited 3 June 2019).

³ “Washington as Cincinnatus”, *Impact of the Classics: Founding of the American Constitution*, available at: <http://projects.leadr.msu.edu/uniontodisunion/exhibits/show/the-classical-world-and-the-fo/-rome-reborn-> (last visited 6 June 2019).

that ruled Hong Kong was infused with its own liberal, democratic processes, and history and had begun passing those to the citizens of Hong Kong. When Great Britain seized Hong Kong from the Qing Dynasty in 1842 – for example – it was a very different place than it was in 1997, when it handed it to the People’s Republic of China (PRC). In the interim, Britain’s parliament had passed a succession of reform acts that had revolutionized British society, incrementally increasing suffrage, until the final act in 1928, which put women on an equal footing to men. Not only had the UK lost its empire and imperial mind-set, it had fundamentally changed into a liberal democracy. For those tasked with handing the colony back to China in the early 1990s, Handover was a bittersweet pill. They were tasked with righting a wrong, but handing the colony back to an authoritarian power felt like an abnegation of the UK’s responsibility.

These themes have all fed in to this project and were the basis for our decision to divide the report into a “Hong Kong section” and a “UK section”. The first section is divided into four chapters. The First chapter, written by Joseph Lian Yi-zheng deals with how Hong Kong identity has fractured under the pressure applied by China’s authoritarian leadership. As with the US experience, new political identities are often the result of political oppression. In the Second chapter Martin Lee and Margaret Ng analyse China’s undermining of the rule-of-law in Hong Kong, arguably the most significant and enduring legacy of British rule. Evan Fowler, a co-editor, contributes an essay on how press freedoms have been circumscribed in the third chapter, with a focus on how China has used media ownership to shape narratives and agendas to its liking and oppose those it finds threatening. Alex Chow and Jeffrey Ngo contribute the fourth chapter on the rise of Youth Activism in Hong Kong, noting how the relationship between pro-democracy groups and pro-independence groups is as much a generational one as it is a conceptual and policy one. Naturally, this links well with the first chapter.

The second section of the report then explores the role of the UK vis-a-vis Hong Kong and China. In the Henry Jackson Society’s 2017 report on Hong Kong, the paper focused primarily on views from Hong Kong. This time, it was felt, that including a section specifically tailored to the UK’s perspectives would also highlight the wider question of where Britain’s responsibility lays in relation to Hong Kong. Legally and diplomatically, this is clear as the UK is a co-signatory of the Sino-Britain Joint Declaration. However, ethically and societally, this is less clear as Britain considers its options in the face of a dramatically changing China. Kerry Brown contributes the fifth chapter laying out the challenges that Britain’s foreign policy elites must navigate in its relationship with Beijing. Benedict Rogers contributes the sixth chapter, which gives a normative overview of the UK’s responsibility. This chapter highlights the incredible gap that is opening up between China and the UK and lays out some responsibilities that the UK Government might assume. Finally, the seventh chapter is authored by Milia K. K. Hau who writes both a critique and an analysis of the paradox of British Nationals (Overseas), an ambiguous form of statehood created by the UK for the people of Hong Kong. Her analysis provides a thoughtful critique of where the UK is remiss in its responsibilities to the people of Hong Kong and makes thought-provoking reading.

As we close the door on the prospects of a politically reforming China, we must think what future lays in store for the people of Hong Kong. Is their fate sealed with the mainland and its high-tech Orwellian system? Or can the UK continue to press Beijing to respect the values and norms promised to the citizens of Hong Kong, which have made the city so successful? Does the UK have either the political will or leverage to succeed in such an endeavour or will its own Brexit-driven troubles keep it from challenging such a lucrative source of investment revenues? As we think of those Chinese students and workers shot down in the streets of the capital in 1989, were their deaths meaningful? Did they have lasting impact on the pursuit of liberty among the world’s Chinese.

We certainly hope so.

SECTION 1: VIEWS FROM HONG KONG

1.1 Hong Kong's Political Values and Shifting Identity

Joseph Lian (練乙錚)

What many believe to be Hong Kong's political values – freedom, the rule of law, good governance, accountability, the quest for democratic reform – have been diluted after more than half 20 years of post-handover existence. Hong Kong's political values stem from its legacy not only as a former British territory, but also as a home for Chinese refugees, fleeing a Communist regime that continues to maintain power in Beijing. These values stand in marked contrast to those that continue to underpin the nature and operation of the Chinese regime today. Carefully guarded by a vigilant populace, they have nevertheless been encroached upon and weakened since 1997 by those in power, on the orders and direction of Beijing.

These values have been further diluted by a steady stream of politically motivated Chinese immigrants, with very different socialisation, loyalty and attitudes from those north of the border, who have since 1997 amounted to more than one million (about 15% of the current total population). Added to this is the steady flow of Hong Kong emigrants leaving the city, which has exacerbated the situation further, steadily undermining local support for Hong Kong's promised autonomy.

This continual undermining of Hong Kong's civic values became more evident in 2012 under chief executive Leung Chun-ying. Under his successor, Lam-Cheng Yuet-ngor, the assault on civil liberties and rights has further hardened, with outright attacks on these values taking place through legislation. In the latest example, an investigation into Leung for serious possible financial fraud was dropped by the Secretary of Justice Cheng Yu-hwa, who cited a lack of evidence. Contrary to practice involving senior officials, Cheng reached a decision without first consulting independent legal opinion. In the same week, Cheng herself had been let off the hook on another fraud case in which she was suspected of violating private home construction codes, while the Independent Chief Prosecutor, in the face of strong evidence, brought charges against Cheng's well-known husband in the same case. Such wanton disregard for legal justice by the government itself is unheard of in Hong Kong and seems a dangerous drift in the rule of law.

Indeed, in keeping with the government's ubiquitous slogan, "Fusing Hong Kong with the Mainland", the city has become increasingly like any other city in China in terms of governance, as its four successive chief executives since 1997 have outdone each other in dismantling the One Country, Two Systems (1C2S) covenant enshrined in the Basic Law. That is, until American politicians, sensitive to the illegal erosion of civil liberties and Hong Kong's core values, in the current trade war with China began to threaten to annul Hong Kong's privileged status as a tariff jurisdiction independent of China under US law, as a result of the erosion of 1C2S. Fearing the loss of business and diplomatic privileges, China supporters, still determined to limit the political and legal rights of Hong Kong citizens codified under the Basic Law, went to the US to try to convince federal lawmakers there that 1C2S was still intact and that, essentially, Hong Kong was not China.

However, ironically, two young first-term legislators of the pro-independence movement were deprived of their popularly elected seats in 2016, a decision handed down by China's rubber-stamp parliament, after they used the slogan, "Hong Kong is not China". In addition, more than half a dozen young Hong Kong legislators or would-be legislators were unseated or

barred from running, based solely on their political views. Not only have they lost their voice in the formal political process, but they have also been barred from making political statements through public speech and display of their banners, specifically in the Citizens' Square in front of the government headquarters. Problematically, the government has not stated upon which grounds such displays have been prohibited. Such sheer hypocrisy is of course not new, but it has reached new heights on the critical issue of the Hong Kong-China relationship.

The antipathy is increasingly becoming mutual. As the government, backed by the powerful communist Chinese state, removes political and legal rights from more and more Hongkongers, the latter have waged a campaign to counter Chinese nationalism in Hong Kong. Beginning with the 2012 Anti-National Education Anti-Brainwashing Movement led by Joshua Wong against the government's stealthy introduction of a China-centric nationalistic curriculum in elementary and secondary schools (which turned out to be successful - something of a rarity), a "localist" school of thinking took shape among the younger people - broadly meaning those born, mostly in Hong Kong, after 1980: roughly speaking, Hong Kong's Generation X. This cohort is young enough to carry very little of the Chinese cultural influence that was ingrained in the baby-boomer generation who, in turn, had parents who lived through the Second World War, part of which instilled in them such a strong sense of Chinese nationalism that it took two generations for much of it to wear off in Hong Kong. Furthermore, they grew up in the final, most liberal and most successful phase of British Hong Kong colonialism, and have no qualms about accepting a British colonial heritage as part of their own. A third factor that has strongly shaped the outlook of this cohort and which has brought them further away from the China concept was the horrors of the 1989 Tiananmen Square Massacre. However, the last wave that carried Hong Kong to its historic high point of Chinese nationalism was yet to come.

In 2008, the confluence of two events created a wave of Chinese nationalism among the baby-boomer generation in Hong Kong. These were, respectively, the Great Sichuan Earthquake which occurred in May that year, and then, in August, the Beijing Olympics, arguably the most visually striking Olympic Games ever held and those in which China's athletes won the most medals. The earthquake unleashed in Hong Kong a torrent of sympathy and sense of kinship with the victims that was hard to imagine. People lined up in banks and supermarkets to pour donation money into special quake relief accounts. Churchgoers prayed incessantly for the rescue of trapped victims. People volunteered to go to the quake-affected areas to help out. Three months later, these born-again patriots received a heavy dose of reward in feel-good national pride from the Beijing Olympics.

But if the ride to the top had been fast, the slide to the bottom was even faster. First to unravel was the Olympic high. In early September, news broke that China was being engulfed in a poisoned milk scandal, in which hundreds of thousands of babies had been fed milk spiked with melamine to inflate protein content readings. Worse, it was revealed that the Chinese government knew about the disaster in July, in the run-up to the Beijing Olympics, and had attempted to suppress the news. This included meting out severe punishments for outspoken parents of victims, who wanted compensation. Then, immediately on the heels of the poisoned milk scandal, came reports of widespread corruption involving donations to the Sichuan quake relief funds. (Of the approximately US\$10 billion of donated money, about US\$7 billion was still not accounted for eight years after the quake struck.)

For Hongkongers, this was enough. But then a generational divide appeared in the reactions to the great let-downs. The older Pan-Democrats, mostly baby boomers, remained idealistically and traditionally patriotic. They emphasised the distinction between China and its people from the current government and the Party, and declared, as always, their loyalty to the former and their opposition to the latter. After all, the tradition role model of Chinese patriotism has been

Qu Yuan (c. 340–278 BC), an official who killed himself in disillusionment over a profligate king to whom he had pledged his loyalty. His most famous words were, “Though I may be betrayed and died nine times over, I shall not regret my loyalty.” From this, all later Chinese patriots derived their moral fortitude. The only difference is, while Qu Yuan declared loyalty to his king, modern patriots offer their loyalty to an abstract concept of “China and its people”. So, for the best among the older Pan-Democrats, the worse China fares under the communists, the greater their burden as patriots.

The younger generation of Hongkongers have very little patience for what they perceive as moral grandiosity. They only live once, and their political sentence has already been declared by China: 2047. That will be the year when the promise of One Country, Two Systems (1C2S) is due to expire. Worse, the CCP is not even waiting for 2047 to get rid of 1C2S; it is doing it steadily every day now. The younger generation’s only course of action is to push back in whatever ways it can think of.

In early 2014, student leaders at the Hong Kong University published an anthology of articles entitled *A Theory of the Hong Kong Nation*, which proved to be a watershed event. Leung, at that time Hong Kong’s chief executive, singled it out for attack in his Policy Address delivered to a full session of the legislature, treating it as poison purveyed by a nascent Hong Kong independence movement possibly aided and abetted by the foreign enemies of China.

By the summer of 2014, on the eve of the Umbrella Revolution, there was already a three-way split in Hong Kong’s democratic camp. The Revolution began as a Pan-Democrat project – an ultimate push for the long-delayed democratic reform about universal suffrage in choosing the entire legislature and the chief executive. Its original aim was to organise a small (1,000 pledged participants) civil disobedience movement in the true sense as defined by theorists such as philosopher John Rawls. It was formally named Occupy Central With Love And Peace (OCLP). Participants were supposed to sit quietly and passively in busy areas of town to await police arrest, incarceration and eventually some prison terms. The younger people would have none of that, however. They wanted action, huge numbers of warm bodies in the streets, and, while they didn’t want violence, a strong physical push into public spaces to exert direct pressure on the government was entirely on the cards. In the end, the OCLP fizzled out, and what Hong Kong went through instead was a 79-day massive show of people power, primarily young people power.

Among the young people of the Umbrella Revolution were splits regarding tactics and organisational issues. These worsened after the end of the movement – and the utter failure of the Revolution in achieving its immediate objective of achieving full democratic reform of the polity – and culminated in two additional divergent groups. The first was led by Joshua Wong and advocates a city-wide referendum to determine the fate of Hong Kong beyond 2047, with full independence from China and full absorption of the city into China as options alongside others. This group is known as the Self-Determinists. The other group is the full independence advocates, consisting of Ray Wong, now in exile; Edward Leung, now serving a six-year sentence; and Andy Chan, whose small but extremely defiant Hong Kong National Party was declared illegal and banned in 2018. Unfortunately, the older Pan-Democrats intensely dislike this group, accusing them of obstructionism and, worse, insinuating that the group leaders are paid agents of Beijing.

All three groups wanted to have their people in the legislature after the end of the Umbrella Revolution. For a while, this pro-independence faction was the big story and the only growth business in the political sphere, until its initial electoral success – gaining two seats in the 70-seat legislature in 2016 – was derailed by China’s strong-arm tactic of disqualifying the winning candidates on the grounds of political disloyalty to the country. Very soon after, the

Self-Determinists met with the same fate. The older Pan-Democrats turned out to be the only opposition group with staying power. But that may prove to be nothing more than fool's gold, for two reasons.

First, it is now clear that China has adopted the strategy of forcing out any opposition group it dislikes, essentially by simply arbitrarily outlawing it, then handing it down for the Hong Kong courts to implement, if other, less draconian measures do not achieve its purpose. This way, any opposition group that retains the chance to play the election game would be tamed enough to be harmless to the regime, and would also serve to hoodwink the world that Hong Kong is still enjoying 1C2S. The two major Pan-Democrat parties in Hong Kong are in danger of becoming just that.

Second – and worse – the pro-independence group forms a critical, if minority, voting bloc. Enmity shown to it by the Pan-Democrats, plus the inevitable reciprocation, has prevented these two groups from working together in elections. The latest episode happened in a by-election in November 2018, when the pro-independence block refused to give its votes to a Pan-Democratic candidate, who then lost out in the otherwise winnable contest to a pro-Beijing candidate by a thin margin. Known as the “scorched earth” tactic, the pro-independence group is forcing the Pan-Democrats – at least the younger wing – to rethink their position regarding Hong Kong independence. If they don't change, more seats currently being held by the Pan-Democrats will be lost in the next elections. What do they gain if they retain the chance to run in elections but suffer the loss of support from a critical voting block?

The demographics are favourable to the younger generations and increasingly dismal for the older Pan-Democrats, a fact that is widely known among the supporters of both groups. The main dilemma for the Pan-Democrats is this: do they wish to continue their old-style Chinese patriotism, risking relevancy over time, or do they wish to merge with the younger generation, motivated more by Hongkonger identity? Naturally, the advantage to this would be the groundswell of popular support, but the disadvantages are also strong. Would they be willing to risk China's wrath, possible de-listing from the legislature, and position themselves in the political wilderness? For the many barristers, professors and senior professionals who make up the bulk of the leadership of the Pan-Democrats, that may be a bridge too far.

1.2 Erosion of the Rule of Law

Margaret Ng (吳靄儀) and **Martin Lee** (李柱銘)

The White Paper on the Practice of the One Country, Two Systems (1C2S) Policy in the Hong Kong Special Administrative Region (HKSAR) was a significant policy shift for how law is treated in Hong Kong. Published by Beijing on 10 June 2014, the White Paper backtracked on the promise of Hong Kong's high degree of autonomy by stating that "the Central People's Government has comprehensive jurisdiction over ... the HKSAR"⁴, and exposed the rule of law and the independence of the judiciary to great uncertainty.

The White Paper states categorically that the HKSAR's exercise of a high degree of autonomy is subject to the oversight of the Central People's Government. Judges and judicial officers are regarded as "Hong Kong's administrators", together with the chief executive, principal officials and members of the Legislative Council, who have the responsibility of "safeguarding the country's sovereignty, security and development interests, and of ensuring the long-term prosperity and stability of Hong Kong". For judges too, "loving the country is a basic political requirement"⁵, the White Paper says, thus contradicting the fundamental principles of separation of powers and judicial independence, and of judges adjudicating cases according to the law alone.

As this shows, there is increasing pressure on the rule of law and judicial independence. Pro-Beijing organisations have aggressively demanded the abolition of the practice of appointing judges from other common law jurisdictions to Hong Kong's Court of Final Appeal, something that is authorised in the Basic Law. Judges and magistrates have been attacked on social media or in demonstrations in front of the court buildings for acquitting democratic activist defendants or imposing on them "light" sentences, or for convicting police officers of assaulting demonstrators.

The law and judicial process are being used by executive authorities to suppress dissidents and critics and to undermine the political system. Three student demonstrators – Joshua Wong, Alex Chow and Nathan Law, who led a peaceful sit-in demonstration for universal suffrage – were arrested for climbing over a fence that enclosed a government forecourt designed for public demonstrations. The Secretary for Justice was not satisfied with the community service sentence imposed by the magistrate's court, and successfully sought a substantial increase of sentence to imprisonment of six to eight months instead. Although the sentences were later overturned by the Court of Final Appeal, the three activists had already served more than two months in prison.

But other political prosecutions are continuing and are being heard in the trial courts or awaiting appeal. These include the prosecution of leaders of the Umbrella Movement, including two academics, a pastor and a number of legislators and activists, variously for archaic common-law offences such as "conspiracy to commit public nuisance" and "inciting others to public nuisance"; and the prosecution of protestors and student activists for the offence of "rioting" in a massive clash with the police in February 2016.⁶

⁴ The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region, White Paper, Information Office of the State Council, The People's Republic of China, available at: http://english.gov.cn/archive/white_paper/2014/08/23/content_281474982986578.htm (last visited 3 June 2019).

⁵ Ibid.

⁶ For a report on the convictions in 2019, see <https://www.amnesty.org/en/latest/news/2019/04/hong-kong-free-jailed-pro-democracy-umbrella-movement-protest-leaders/>.

The Secretary for Justice brought proceedings of criminal contempt of court against more than 40 members of the public who behaved peacefully at various sites where the Umbrella Movement held demonstrations. All were found guilty. Sentences ranged from more than four months of imprisonment to suspended sentences of one to two months coupled with HK\$15,000 fines.

The courts were used to stifle the government's opposition. On the pretext that two young legislators elect – Baggio Leung and Yau Wai-ching – had not correctly, solemnly or sincerely taken their oath of office, the Secretary of Justice applied to the Court to remove them from their seats. While the Court was still deliberating, the Standing Committee of the National People's Congress (NPC) intervened by issuing an Interpretation of Article 104 of the Basic Law, effectively adding a number of new requirements to, but without amending, the Oaths and Declarations Ordinance. The Court of Appeal held that the Interpretation was to be applied with retrospective effect. Following this success, the Secretary of Justice went on to apply, similarly with success, the disqualification of four more democratic legislators.

Further, on the basis of the Interpretation, returning officers appointed by the government rejected the nomination of Chan Ho-tin to stand for the 2016 Legislative Council election, for the reason that his party advocated Hong Kong independence. This blatant infringement of the fundamental right to political participation was upheld by the Court of First Instance, substantially influenced by the Interpretation. Following the Chan Ho-tin case, other nominations for by-elections in 2018 (e.g. Agnes Chow Ting and Lau Siu-lai) were rejected by returning officers, for the reason that their political support for Hong Kong's "self-determination" was to be treated as indistinguishable from advocating for Hong Kong's independence.

On co-location, under the 1C2S principle, the Joint Declaration and the Basic Law guarantee that Hong Kong has a separate legal system from the Mainland. Hongkongers are entitled to the rights and freedoms under international conventions and principles sacred to the common law, and to the protection of these rights and freedoms by Hong Kong's independent judiciary. However, by an arrangement purportedly proposed by the Hong Kong government and endorsed by the Standing Committee of the National People's Congress, an area is carved out in the high speed rail terminal at West Kowloon to which Mainland's jurisdiction and the whole of Chinese laws are brought in to replace Hong Kong's jurisdiction and Hong Kong laws, thereby introducing One Country, One System into that area. The sole justification offered by the Hong Kong government is that, as the Standing Committee is the highest state authority of China, what it says has the effect of law. This stance is a complete reversal of the idea of the rule of law, and opens the door to future incursions at will into Hong Kong's legal autonomy, on which Hongkongers have been relying for their safety and liberty.

1.3 Press Freedom in Hong Kong

Evan Fowler (方禮倫)

Press freedom is central to the identity of Hong Kong. Surveys have consistently shown that Hongkongers and those who come to Hong Kong consider a free press to be, along with the rule of law, one of Hong Kong's two core institutions. It is an embodiment of a core value, that of freedom of expression.

Beyond competing ideologies, a free and vibrant press environment was critical in maintaining social and political harmony in a city denied the political authority to govern itself. It allowed for the representation, airing and acknowledgement of Hong Kong's various political and socio-cultural identities, both Chinese and otherwise.

Under the terms of the Sino-British Joint Declaration, enshrined in principle in the system of One Country, Two Systems and codified in the Basic Law, the Hong Kong Special Administrative Region (HKSAR) is to maintain a free press until 2047. This was guaranteed by both the UK and the PRC governments. Hong Kong is not to adopt the restrictive socialist press model as applied in the rest of China.

In the decade to 2014 it would be right to ask whether press freedom was being eroded in Hong Kong and by how much, and, given this, to deduce whether Hong Kong continued to enjoy a free press. During this period, reports issued by leading global media watchdogs consistently recorded a *de facto* decline, despite the supposed *de jure* protections afforded by One Country, Two Systems.

Concerns regarding self-censorship and the increasing interference of media owners have been consistently raised. These have included, but are not limited to, unfair dismissal, threats and physical attacks against journalists known to be of a pro-democratic persuasion, and the use of cyberattacks to both cripple critical platforms and distort public opinion. These concerns are being increasingly substantiated within academic literature.

While there may be difficulty in quantifying gradations of editorial judgement, in aggregate a picture emerges of a steady erosion of media independence and a reduced willingness by mainstream media institutions to investigate authority, both in Mainland China and in Hong Kong. This change was reflected in Freedom House's decision in 2008 to downgrade Hong Kong from "free" to "partially free" – a rating Hong Kong has continuously maintained since then. During a period of growing authoritarianism and press restrictions, Reporters Without Borders (RSF) in 2018 ranked Hong Kong 70th out of 180 regions and countries – a significant fall given that Hong Kong had, only 15 years earlier, consistently ranked in the global top 20.⁷

According to a recent report, eight out of Hong Kong's 26 mainstream media outlets are either under Mainland Chinese ownership or have significant Mainland Chinese stakes. The others, it must be noted, are owned by Hong Kong conglomerates with significant business interests in Mainland China, including fixed assets, which require Communist Party assent to remain in operation and profitable.

This picture of media ownership is mirrored in printing and distribution, where the market is dominated by publishers and bookstores run by a company held by Beijing's Liaison Office in Hong Kong, which is accused of soliciting funding and support from the Central government.

⁷ See 'Beijing's invisible hand reaches ever deeper into Hong Kong media', *Reporters Without Borders*, 2 May 2016, available at: <https://rsf.org/en/reports/beijings-invisible-hand-reaches-ever-deeper-hong-kong-media>, (last visited: 28 May 2019).

The dominant players in free broadcast (TVB), subscription (iCable) and online (HK01) mediums are similarly controlled by Mainland actors. Yu Pun-hoi is not only the principal investor of HK01, but also the CEO and Editor-in-Chief. TVB, which was once modelled on the BBC, is commonly called “CCTVB” in popular Hong Kong parlance, given its increasingly pro-establishment and pro-Beijing slant. Chinese media mogul Li Ruigang, a member of the Chinese Communist Party (CCP) and former Deputy Secretary General of Shanghai, is its largest shareholder.⁸

Hong Kong media operates in a market distorted by official politics and Mainland capital, which is itself politically linked. This has led media platforms servicing a local voice to the fringes, with the notable exception of Jimmy Lai’s *Apple Daily*, the last openly pro-democracy Hong Kong Chinese newspaper. However, the *Apple Daily* is a tabloid, and, given its size, the tenacity of Jimmy Lai and its questionable record with the facts, it is dismissed by critics.

Since 2014 it is no longer adequate to merely note the continuing erosion of press freedom in Hong Kong. There is a wider context of oppression, however subtle – a “chilling effect” – that is gradually becoming the norm. The erosion of freedom is today matched by an assertive attempt to redefine the role of the Hong Kong press and to foster a compatible press culture in both the profession and among the public at large.

This may in part be a response to the 2014 Umbrella Movement and the subsequent rise of localism as a genuine political force. However, it would be wrong to understand these changes as purely reactive in nature. Under Xi Jinping, China has increasingly asserted a new understanding of those concepts central to the international rules-based system, including freedom of press.⁹ Fundamentally, the concept of the Fourth Estate is itself not accepted.

There is a long tradition in the Chinese Communist Party of viewing the media as the frontline of a greater ideological struggle, and of understanding its role alongside that of the military (一手抓槍桿子, 一手抓筆桿). The media, as with the law, is not to be a constraint on authority, but a tool of authority.

In this, Xi Jinping thought on the role of the press has been consistent and clear. Its highest virtues must be faithfulness to the Party (黨性) and adherence to the principle of news run by the authorities. Its role to report “positively” and to promote the Party line. According to Xi:

[The media] must take on this mission and responsibility, [and they] must place political orientation (政治方向) before all else, firmly adhering to the principle of the Party nature [of the media], firmly adhering to the Marxist View of Journalism (馬克思主義新聞觀), firmly adhering to correct guidance of public opinion (正確輿論導向), and firmly adhering to an emphasis on positive propaganda (正面宣傳為主).¹⁰

There is ideological opposition to the concept of a ‘Western’ press, which challenges the principle of party control over news and publishing¹¹. From this may be drawn three points: first, that it is correct for the Party to view the Hong Kong press as in a state of “capture” by Western ideas of press freedom; second, that this Western-style press, however diminished, nevertheless represents a threat to the Party, and concurrently therefore to the Chinese State; and third, that press freedom in Hong Kong is not therefore merely a manifestation of Hong

⁸ Peggy Sito, “Chinese media magnate Li Ruigang revealed as largest shareholder in Hong Kong’s TVB”, *South China Morning Post*, 19 May 2017.

⁹ For an understanding of Chinese attempts to redefine the role of global media, and the way its operations in both Hong Kong and the UK contribute to this, see ‘China’s Pursuit of a New World Media Order’, *Reporters Without Borders*, available at: https://rsf.org/sites/default/files/en_rapport_chine_web_final_3.pdf (last visited: 28 May 2019).

¹⁰ See, for example, Concerns over HK’s rule of law unfounded, <https://www.chinadailyhk.com/articles/16/137/125/1537980382324.html>.

¹¹ See, for example, Concerns over HK’s rule of law unfounded, <https://www.chinadailyhk.com/articles/16/137/125/1537980382324.html>.

Kong's supposed core values, but an issue of national sovereignty, and is therefore not guaranteed by the concept of One Country, Two Systems.

Indeed, Beijing and the HKSAR government have notably avoided any attempt to defend press freedom. Legitimate concerns are officially brushed aside either with silence or, in English, as being "unfounded"¹². Contrary to concerns raised regarding the rule of law, there has been no effort by the authorities to defend the perception of a free and critical press. Consequentially, public confidence in press freedom remains low, particularly among journalists themselves.

Since 2014, Hong Kong has seen a very visible sweetening of the carrot and a sharpening of the stick. The use of the press as a means of propagating the CCP's narrative has become more pronounced. Select Hong Kong journalists are receiving regular invitations from the Chinese authorities to cover staged confessional interviews with Mainland activists, lawyers and "missing persons" – including the Causeway Bay booksellers – held in Mainland police custody. The reputation and journalistic standards of the Hong Kong press are appreciated as a means of normalising such practices within China, providing credibility and as a part of a wider effort to promote its preferred narrative both at home and internationally.

Online media is the one area where a critical voice seemingly remains vibrant. *Hong Kong Free Press*, *VJMedia* (輔仁 媒體), *Independent Media Hong Kong* (香港獨立媒體), the *Stand News* (立場新聞), formerly the *House News* (主場新聞), and *Passion Times* (熱血時報) are examples of digital first news platforms established by the local community and grassroots activist groups where citizens can also publish commentaries.¹³ These sites, all of which have a significant social media presence, have a younger and more educated readership. However none have the scale of influence and market share of *House News* in 2014, which was pressured to close by what its founder Tony Tsoi described as "White Terror".¹⁴

Online media continues to remain susceptible to Beijing's corporate and intelligence interests, whilst journalists and contributors face regular physical threats. Since the 2014 protests, an upsurge in 'uncaptured' new media sources, the easy connectivity and contentious issues discussed on these platforms created echo chambers and polarisation, which has led to a fracturing of support and increased distrust within the protest movement.¹⁵ This has blunted the credibility and influence of online media, as has the aggressive promotion of China-based social networking apps *WeChat* and *Weibo*. They are, I was told by a veteran journalist and contributor, "not worth the necessary resources and effort to clamped down hard on... at the moment."¹⁶

A significant development has been Mainland interference in the English language and international press, which had, until 2015, received very little attention.

The predominant English language newspaper, the *South China Morning Post* (SCMP), has not escaped controversy. Under the editorship of Wang Xiangwei, the paper reinvented its commentary pages by replacing columns with op-eds. Veteran journalists and commentators,

¹² See, for example, Concerns over HK's rule of law unfounded, <https://www.chinadailyhk.com/articles/16/137/125/1537980382324.html>.

¹³ See Cheng EW (2014) Between ritualistic protest and perpetual struggle: Transformation of activism in postcolonial Hong Kong, <https://www.psa.ac.uk/sites/default/files/conference/papers/2014/Between%20Ritualistic%20Protest%20and%20Perpetual%20Struggle.pdf>; and (2016) Street politics in a hybrid regime: The diffusion of political activism in post-colonial Hong Kong, *The China Quarterly* 226: 383-406.

¹⁴ See Pulling out of the news business: Tony Tsoi, <https://www.scmp.com/news/hong-kong/article/1565691/pulling-out-news-business-tony-tsoi>; and House News closure was no business as usual, <https://www.scmp.com/comment/insight-opinion/article/1564375/house-news-closure-was-no-business-usual>.

¹⁵ See N. Frisch, V. Belair-Gagnon and C. Agur, Media capture with Chinese characteristics: Changing patterns in Hong Kong's new media system, *Journalism* 2018, Vol. 19(8) 1165-1181, [sagepub.com/journals-permissions](https://www.sagepub.com/journals-permissions) DOI: 10.1177/146884917724632.

¹⁶ Interview with Steve Vines, conducted by author, November 2018.

including Steve Vines, Kevin Rafferty, Frank Ching and Philip Bowring, were dismissed in a particularly slapdash manner, causing much consternation among foreign journalists. However, the sale of the *SCMP* to Jack Ma's Alibaba Group in 2015 marked a very public redefining of the paper's role, from being an international standard paper in Asia in the Western sense to being an international Chinese paper with the role of conveying China's message to the world. To its critics, it is "moving away from independent journalism and pioneering a new form of propaganda".¹⁷

From this perspective, the substantial investments made by Alibaba in the *SCMP*, including the removal of its online paywall, may be viewed as a further erosion of press freedom. And while the *SCMP* continues to employ good journalists and to report well, the trend towards more pro-China articles, often taken directly from state-controlled Mainland papers, continues. It has also become common knowledge among foreign and local journalists that the *SCMP* continues to blacklist certain writers not only based on their political position but also because of the nature of their identification with Hong Kong – a policy that one senior editor describes as having been taken above editorial level.¹⁸

The decision in October 2018 of the Hong Kong government not to renew the work visa of Victor Mallet, the Asian news editor for the *Financial Times*, is both decisive and symbolic. It was the first time a foreign journalist had been denied a visa by the HKSAR government. Despite repeated requests both within Hong Kong and by the UK government, no reason has been given.

It is widely presumed that Mallet was in effect expelled from Hong Kong for having hosted at the Foreign Correspondents' Club (FCC) a talk by Andy Chan, an advocate of Hong Kong independence whose Hong Kong National Party was, in another first, subsequently banned. This was despite ferocious opposition from both local pro-establishment politicians and commentators, who repeated the Party narrative that all disturbances in China are a result of malicious foreign interference, and that portrayed press freedom and freedom of expression are means by which foreign imperialists stoke trouble. Some of these pro-establishment voices, including that of former Chief Executive Leung Chun-ying, declared that the FCC ought to be closed. It is worth noting that during this period the government did not defend either the right of journalists to question Chan as to his opinions nor the right of the FCC and Mallet to host questions in the name of freedom of the press.

In November, the Hong Kong Journalists Association (HKJA) warned that the "death knell" for freedom of speech in Hong Kong had been sounded. The application of an increasingly hardening sharp power, once reserved for the Chinese press, is now being applied judiciously to a muted international press corps. One foreign correspondent told me, "Victor had it coming. We all knew it. As soon as he allowed Andy Chan to speak they'd get him"¹⁹ Indeed, even before his visa was denied, it was known in journalistic circles that the *Financial Times* had planned to reassign Mallet to Paris.

Disturbingly, there are signs that many journalists are increasingly adapting to the new CCP-imposed rules of the game in Hong Kong. To say, as many do, that it is "still better than being in the Mainland" may be factually correct, but it is also a way to reconcile oneself to an uncomfortable truth that Hong Kong is gradually losing freedoms that it once took for granted. Foreign journalists can always leave, but for Hong Kong Chinese journalists, many of whom have family on the Mainland, such security is a luxury. For such local journalists, the example

¹⁷ Javier C. Hernandez, "A Hong Kong Newspaper on a Mission to Promote China's Soft Power", *New York Times*, 31 March 2018, <https://cn.nytimes.com/china/20180402/south-china-morning-post-hong-kong-alibaba/zh-hant/dual/>.

¹⁸ See also *Asia Sentinel* (2015), Leading columnists purged at Hong Kong's paper of record, available at: <http://www.asiasentinel.com/politics/putsch-columnists-south-china-morning-post> (accessed 10 November 2016).

¹⁹ Interview with Ben Bland, conducted by author, November 2018.

elsewhere on the Mainland, and especially in the autonomous region of Xinjiang, is a more pressing and often personal concern.

The HKJA also drew attention to an economic argument: “If voices critical of Beijing’s policies cannot be tolerated today, who is to say when a report forecasting a devaluation of [the] renminbi will be disappeared?”²⁰ This is a perspective many in Hong Kong are increasingly taking in the hope that those international norms and values that built not only this city but also its people might be preserved. It is an appeal not to a political nor a local authority, but to the interests of international business.

Hong Kong has seen an institutional movement away from a Western liberal model of media and understanding of press freedom to an authoritarian corporatist model.²¹ The power of money to capture a media sector without directly employing the traditional tools of authoritarian coercion has implications for other media markets, including the UK.²² The challenge to press freedom in Hong Kong must be understood within this wider context, and within the context of increasing repression in China and an aggressive attempt internationally to impose a new China model. There is now in Hong Kong a genuine fear of red lines only the Party sees, and which move depending on the Party’s interests.

²⁰ Su Xinqi, “Dissident Chinese writer Ma Jian lands in Hong Kong as Tai Kwun cultural centre reverses decision not to host his talks”, *South China Morning Post*, 9 November 2018.

²¹ See Hallin DC and Mancini P (2004), *Comparing Media Systems*, Cambridge: Cambridge University Press; and Sparks C (2010), China’s media in comparative perspective, *International Journal of Communication* 4: 552-566.

²² See Fung AYH (2007), Political economy of Hong Kong Media: Producing a hegemonic voice, *Asian Journal of Communication* 17(2): 159-171.; and, Lau J (2008), The narrowing gap: How Hong Kong media is inching towards the China model, available at: <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/THE%20NARROWING%20GAP-%20Hong%20Kong%20and%20Chinese%20media%20models.pdf> (accessed 10 November 2016).

1.4 The State of Youth Activism in Hong Kong: Reflections on Recent Challenges

Alex Chow (周永康) and **Jeffrey C. H. Ngo (敖卓軒)**

Perhaps the single most important legacy of the Umbrella Movement five years ago is the broadening of the territory's political discourse. Much as other aggressive Chinese assertions have led assumptions of sovereignty to be more widely challenged and reassessed – including not least Taiwanese and Tibetan self-determination – so, too, is it the case among Hongkongers and the hitherto unchallenged assumptions of Chinese sovereignty over Hong Kong. For many, if the Chinese government could remain unwilling to fulfil its promise of democracy even in the face of massive demonstrations spanning three months, then any past faith in One Country, Two Systems and the Basic Law, Hong Kong's constitutional document, may well have been misplaced.

Hong Kong's activist movement has been at the forefront of the far-reaching crusade to elevate Hong Kong's struggle from calling for mere democratic reforms under Chinese rule to self-determination, and even outright independence. In the post-Umbrella era, this has led to the foundation of several new political organisations, on both the political left and the political right, which have come to define Hong Kong's opposition politics. In the New Territories East by-election on 28 February 2016, Hong Kong Indigenous's spokesman, Edward Leung, won 15.38% of the vote, a strong showing that many believed would have likely translated into two of the constituency's nine seats within six months. But Beijing's pushback was swift: along with Andy Chan, 25, convenor of the Hong Kong National Party, Mr Leung was among five candidates barred from running for office that September on the grounds of his pro-independence views.²³

Despite unfair and potentially illegal pre-election screening, Yau Wai-ching, 25, and Baggio Leung, 30, both from the localist group *Youngspiration*, still managed to enter the race; both won. In addition, the 23-year-old founding chairman of *Demosistō*, our friend and colleague Nathan Law, a core student leader of the Umbrella Movement, became Asia's youngest ever elected lawmaker and entered the Legislative Council on a swell of popular hope and youthful energy. Yet the optimism following his victory proved to be short-lived. After the *Youngspiration* duo used the inauguration ceremony to stage a protest, the Hong Kong government took the unprecedented move of denying them a second chance to take their oaths of office, and instead took the matter to court. Beijing then intervened and issued a Basic Law Interpretation, retroactively requiring "sincerity" and "solemnness" to China as part of any oath-taking procedure. Ms Yau and Mr Leung were hence removed from the legislature.²⁴

A local court cited the same Interpretation in the summer of 2017 to dismiss four additional progressive lawmakers. Among them was Mr Law, who had quoted Mahatma Gandhi – "You can chain me, you can torture me, you can even destroy this body, but you will never imprison my mind" – and vowed to "never serve a regime that murders its own people".²⁵ Separately, only

²³ Chris Lau, "Jailed Hong Kong independence activist Edward Leung drops legal challenge over government decision to ban him from running in 2016 Legco election", *South China Morning Post*, 23 May 2019.

²⁴ 'Sincerity' and 'solemnness': 'In Full, in English: Beijing's Interpretation of Hong Kong's Mini-Constitution, the Basic Law', *Hong Kong Free Press*, 7 November 2016, <https://www.hongkongfp.com/2016/11/07/in-full-in-english-beijings-interpretation-of-hong-kongs-mini-constitution-the-basic-law/>. See also Gladys Li's excellent analysis of the Oath Taking ordinance at: <https://www.hongkongfp.com/2016/11/22/objective-look-oaths-declarations-ordinance-part-i/> and <https://www.hongkongfp.com/2016/11/23/demystifying-hong-kongs-oaths-declarations-ordinance-part-2/>.

²⁵ 'You can chain me': 'Video: Lawmaker Nathan Law Protests at Oath Taking, Quotes Gandhi, Before Clashing with LegCo Sec.', *Hong Kong Free Press*, 12 October 2016, <https://www.hongkongfp.com/2016/10/12/video-lawmaker-nathan-law-protests-at-oath-taking-quotes-gandhi-before-clashing-with-legco-sec/>. See also <https://www.theguardian.com/world/2017/jul/14/hong-kong-pro-democracy-legislators-disqualified-parliament>.

weeks later, the Hong Kong government won an appeal to elevate his sentence for his role in the 2014 Umbrella Movement from 120 hours of community service to eight months in jail. (One of the authors of this chapter, Alex, received a seven-month jail term from the same case.)

As a result of Chinese President Xi Jinping's hard-line policies to roll back previous gains by youth activists in Hong Kong, the year 2018 saw additional setbacks in the territory's freedoms and autonomy. On 13 January, Agnes Chow – a member of *Demosistō*'s standing committee who had just turned the minimum age of 21 to appear on the ballot – announced her intention to run in the upcoming Hong Kong Island by-election to fill the Legislative Council seat vacated by Mr Law's earlier disqualification. She secured endorsements from both sitting lawmakers and pro-democracy veterans across the opposition camp. By the time she formally submitted all paperwork on 18 January, she had complied with all requirements, such as renouncing her British citizenship and signing the Confirmation Form that had first been introduced in 2016 and asked candidates to uphold three specific Basic Law articles governing Hong Kong-China relations.

However, Anne Teng, a returning officer, declared Ms Chow's nomination invalid on 27 January. In a six-page document outlining her verdict, Ms Teng wrote, "By choosing to state her political affiliation with *Demosistō* in the nomination form, Ms Chow made a clear and explicit statement that, at the time when she filled in the nomination form, she was a representative of *Demosistō* and subscribed to its doctrine of 'democratic self-determination'." ²⁶ Ms Teng suggested also that "recent media reports" did not indicate that Ms Chow had "changed her intention or disowned any subscription of hers to the doctrine" ²⁷, which the returning officer argued was "inconsistent with the principle of 'One Country, Two Systems' as enshrined and implemented under the Basic Law". ²⁸

The Hong Kong government, in effect, had dispatched a low-level bureaucrat to announce the high-level decision that Ms Chow could not stand in the election, purely on the basis of political views deemed unacceptable in Beijing. This blatant neglect of due process drew criticism from a wide range of civil-society groups. Au Nok-hin, 28, an independent democrat, replaced her on the ballot and went on to win the race on 11 March. The implications were nevertheless straightforward and disturbing: if you are a *Demosistō* member, you will essentially be stripped of your right to ever run for office.

A pair of contentious court rulings in the early summer of 2018 dealt further blows to youth activists in Hong Kong. On 4 June, Ms Yau and Mr Leung of *Youngspiration*, along with three of their aides, were sentenced to four weeks in jail for "taking part in an unlawful assembly", in accordance with an obsolete statute enacted during the colonial period. The group were indicted for "storming" the Legislative Council chamber in November 2016, when Ms Yau and Mr Leung made a second attempt to be sworn in. Despite being popularly elected, both had not only been denied the opportunity to take office but were now also facing imprisonment. Ms Yau and two others opted not to appeal and went on to complete their sentences in full. Calling the decree "a major over-reaction" ²⁹, Lord David Alton wryly remarked, "Imagine if a Member of Parliament were sent to jail for staging a protest inside Parliament." ³⁰

One week later, on 11 June, Hong Kong Indigenous's Edward Leung was handed a six-year jail term after a judge found him guilty of rioting during civil unrest in Mong Kok in early 2016. He

²⁶ Ernest Kao, Tony Cheung, "Hong Kong Bar Association laments 'political screening' of election candidates", *South China Morning Post*, 14 February 2018.

²⁷ Ibid.

²⁸ Ibid.

²⁹ "Former Hong Kong lawmakers sentenced to a month in jail", *Reuters*, 4 June 2018.

³⁰ Ibid.

and four others had been facing trial for agitating or participating in the head-on confrontation triggered by the Hong Kong police's attempt to dismiss street hawkers in a busy commercial district over the 2016 Chinese New Year holiday. In connection with this case alone, local authorities had by that point arrested more than 90 individuals, more than 30 of whom were convicted, and three others escaped from Hong Kong while on bail. Still, the public was particularly shocked by Mr Leung's sentence, which was by far the harshest.

Lord Chris Patten, the 28th and last Governor of Hong Kong, also weighed in. During his time in office from 1992 to 1997, he had tried to reform the Public Order Ordinance – for which Mr Leung was criminalised – “because it was clear that the vague definitions in the legislation are open to abuse and do not conform with United Nations human rights standards”³¹. The changes, however, were later reverted by the Provisional Legislative Council, comprising members handpicked by the Chinese government. The consequences were apparent some two decades later. “It is disappointing,” Lord Patten concluded, “to see that the legislation is now being used politically to place extreme sentences on the pan-democrats and other activists.”³²

The pro-independence Hong Kong National Party would soon even come to face complete obliteration. Its convenor, Mr Chan, was notified in July by local authorities of a probable ban for breaking the Societies Ordinance – yet another obscure law from the colonial era, initially intended to crack down on criminal activities of secret societies, which had been put in place “for the interests of national security or public safety, public order or the protection of rights and freedom of others”³³. The police claimed that the party's activities had amounted to sedition, which threatened Chinese “territorial integrity”.³⁴ The surprising turn of events thrust Mr Chan into the global limelight, and for this he was invited by the Foreign Correspondents' Club (FCC) in Hong Kong to deliver a speech.

The Chinese Foreign Ministry intervened and pressured the FCC to cancel the event, but Victor Mallet, its acting president, stood his ground. Amid the pressure, the event went ahead on 14 August with a sold-out audience. Mr Chan described Beijing as Hong Kong's “colonial master” and said China posed “a threat to all free peoples in the world”. He added, “If Hong Kong were to become truly democratic, Hong Kong sovereignty must rest with the people of Hong Kong. And there's only one way to achieve this: independence.”³⁵

On 24 September, the Hong Kong government officially declared Mr Chan's party illegal, leading to the insistence that it must cease operation. This was without a doubt a serious impediment to Hong Kong's autonomy. US Secretary of State Mike Pompeo expressed “concern” and reiterated American support for “the freedoms of expression, peaceful assembly, and association”.³⁶ But the incident did not end there. Because he had insisted on giving Mr Chan a platform earlier, Mr Mallet, the *Financial Times* Asia news editor, was denied a renewal of his work visa in October without any explanation; he was then completely barred from entry when attempting to return to Hong Kong as a British national with his family in November. Long a tactic used in China to censor and discipline foreign journalists, expulsion had become part of the Hong Kong government's toolkit. Press freedom was also now in grave peril.

³¹ Holmes Chan, “Ex-Governor Chris Patten calls Public Order Ordinance ‘vague’, ‘open to abuse’ following Edward Leung riot sentencing,” *Hong Kong Free Press*, 11 June 2018, <https://www.hongkongfp.com/2018/06/11/ex-governor-chris-patten-calls-public-order-ordinance-vague-open-abuse-following-edward-leung-sentencing/>

³² Ibid.

³³ Societies Ordinance, Amended 75 of 1992, s.3, available at: <https://www.elegislation.gov.hk/hk/cap151> (last visited 3 June 2019).

³⁴ Ibid.

³⁵ Casey Quackenbush, “In Defiance of China, a Pro-Independence Activist Speaks at Hong Kong's Foreign Correspondent's Club,” *Time*, 14 August 2019. For full video of talk see <https://www.hongkongfp.com/2018/08/14/video-full-activist-andy-chan-says-hong-kong-independence-path-democracy-press-club-talk/>.

³⁶ “US Presses Hong Kong on freedoms after party ban,” *France 24*, 29 September, 2018, <https://www.france24.com/en/20180925-us-presses-hong-kong-freedoms-after-party-ban>.

All in all, as developments in 2018 have shown, President Xi today is determined to suppress separatism in the strongest ways possible. This policy is far from unique to Hong Kong, as the ongoing mass incarceration of Uyghurs in Xinjiang's re-education camps and growing military threats to Taiwan's independence demonstrate. In Hong Kong, the heavy-handed quashing of youth activists - removing us from the legislature, disqualifying our candidacy in future elections, even sending us to jail - is about much more than mere retribution of the Umbrella Movement; it is a systematic dismantling of institutions that might be able to facilitate another protest like this in the future.

We cannot deny that the general public's willingness to engage in politics has fallen, as recent voter turnouts and protest turnouts have shown. The perceived cost of resistance in whatever form has increased in light of the political persecutions. But the cost of not resisting is likely to be higher, as the year 2019 looks to be another challenging one. Acting on orders from Beijing, the Hong Kong government is currently pushing through the National Anthem Ordinance as well as extradition arrangements with China, both of which are severe threats to our liberties. Unless not just our generation, but Hongkongers from all walks of life, have the resolve to fight on, the survival of Hong Kong as a place and an idea is at grave risk.

SECTION 2: VIEWS FROM THE UNITED KINGDOM

2.1 Britain and Hong Kong in the Era of Xi Jinping

Kerry Brown

Since its handover to the People's Republic of China (PRC) in 1997 by the United Kingdom, Hong Kong has been the subject of six-monthly reports made by the British Foreign Office to Parliament³⁷. In some senses, these serve as an audit of how the One Country, Two Systems policy has been faring in the two decades since the rainy night in July 21 years ago when the then Prime Minister Tony Blair and members of the Royal Family called a symbolic end to the century and a half of direct involvement in this territory.

Over the past two decades, we have to remember that all three parties involved in the hand-back arrangements have changed. Some of this has been in ways unimaginable when the negotiations were under way between Beijing and London in earnest from 1984 onwards. Back then, the UK had a larger economy than that of China. If there was a disparity, it was between a country that sat at a major set of alliances as one of the most influential democracies in the world at a time when some thinkers were airily talking of “the end of history” and when the collapse of the USSR was still fresh in people's minds, and one that was still recovering from the shock and isolation after the military crackdown in June 1989. The only way to go, it seemed back then, was on the onward march to liberal, open, free systems. To add to this sense of the advantages mostly being in the UK's favour, China too was undergoing a tricky set of domestic reforms, under the Premiership of Zhu Rongji from late 1997, who finally tried to overhaul the state-owned enterprises and pull the country towards membership of the World Trade Organization – something only achieved in 2001. Even by then, the assumption was that stipulations and conditions for membership of this body would put huge pressure on China to change both economically and politically.

By 2018, things had been transformed. China's economy is now three times the size of that of the UK³⁸. Its geopolitical reach is now truly global – global enough to be figured as the greatest competitive threat to the United States under the presidency of Donald Trump. The UK, however, is wrestling with a profound crisis over its role in Europe, attempting to leave the European Union, and with a completely redrawn role in the world. As for the hopes of the spread of liberal democracy, as Freedom House and the audits of others have made clear, never since the end of the Cold War have open, multi-party systems seemed so vulnerable³⁹.

No figure represents the rise of autocratic, strong-man, authoritarian regimes better than the current leader of the People's Republic, Xi Jinping. However hard and deep officials and their political masters may have thought in the years before 1997, it would have been hard to imagine them contemplating the outcome that we now know has happened: a China with a dynamic and perpetually growing economy but under a wholly unreformed and even more entrenched looking one-party political system. What was not expected in 1997 was that China would change so much in one area (the economic) and so little in another (the political).

³⁷ “Six Monthly reports on Hong Kong”, Foreign and Commonwealth Office, 12 July 2013, available at: <https://www.gov.uk/government/collections/six-monthly-reports-on-hong-kong> (last visited 2 June 2019).

³⁸ “World Bank Data: Free and Open access to global development data”, *The World Bank*, available at: <https://data.worldbank.org/> (last visited 3 June 2019).

³⁹ “Democracy in Retreat: Freedom in the World 2019”, *Freedom House*, available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2019/democracy-in-retreat> (last visited 3 June 2019).

In the early era of the handover, for the first decade, there were many (I have to put my hand up here – I was one of them) who thought that Hong Kong, with its strong rule of law and its relatively clean governance and lack of corruption, would serve as a positive model for where the rest of the country it was now rejoined to politically might need to head. The UK could pat itself on the back: despite most of the advantages being weighed against it during the negotiations it had managed to almost sneak in a Trojan Horse. Through the effortless superiority of its legal and social system, and the power of its finance and commercial structures, Hong Kong would spread the contagion of free thinking and modernity with western characteristics through the rest of the country. Needless to say, as with almost every other area when one thinks about the PRC, things have turned out to be way more complicated.

The 2018 43rd bi-annual report on Hong Kong, issued in September 2018 by the British Foreign Office,⁴⁰ is representative of this. Despite stating at the start, and the end, that it feels that the One Country, Two Systems rubric is holding up well, it goes on to list a whole series of areas where there has been unwelcome change. From statements made by the Chinese National People's Congress during its annual meeting in Beijing in March seeming to cast doubt on the whole principle of One Country, Two Systems having any continuing validity, to sentences being passed on those accused of being involved in the Occupy Central 2014 movement and then subsequent public protests, to issues around abduction of booksellers and maltreatment of Hong Kong journalists reporting either in the Mainland or in their home territory, the report makes for sobering reading.

In fact, this is simply a continuation of a pattern in recent years shown by other reports. In 2016, the Foreign Office under the then Foreign Secretary Philip Hammond went as far as to say that the abduction of five booksellers by what were believed to be PRC security officers, some of them while still in Hong Kong, was a violation of the Sino-British 1984 agreement and the subsequent Basic Law, a document that serves as the *de facto* constitution for the Special Administrative Region. Under these, the judicial and public order affairs of the city were clearly meant to remain in the hands of local actors. That does not seem to have happened in this case. A number of other examples only deepened the sense that, just as within the PRC the controlling, all present hand of the Xi-ist state was reaching into almost every possible area of life, so too it was now starting to seep across the border and bring about its actions there.

Listening to the statement delivered by Xi himself, when he made his first visit to the city as Party Secretary and leader in 2017 to mark the twentieth anniversary of the handover, only confirmed this. The declaration carried his customary air of confidence. Beijing acknowledged the value of Hong Kong. It appreciated the economic benefits and support that Hong Kong, as a major international finance and commercial centre, gave. But the overarching narratives driving politics in Beijing were necessarily those that also impacted and framed the destiny of everywhere else in the country – and that included the Special Administrative Region. There were no opt-out clauses here. Just as the country was now on a mission of renaissance and rejuvenation, gearing up towards the centenary celebrations in 2021 of the hundredth anniversary of the foundation of the Communist Party, so Hong Kong needed to be a celebrant at that great event. As with party members and key business people in the PRC, so too in Hong Kong, the key thing was to display in word and action loyalty to this great mission – a mission that Xi has been promoting exhaustively in the last few years. To not do so was to be a traitor and a renegade to the Motherland.

In its dealings with Hong Kong, the UK is in effect encountering this great nationalistic core belief of the PRC under Xi. And it is doing so with its own domestic politics in disarray because

⁴⁰ 'Six-monthly report on Hong Kong: January to June 2018', HM Government, 6 September 2018, available at: <https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-january-to-june-2018> (last visited: 28 May 2019).

of the turmoil flowing from the outcome of the Brexit Referendum in 2016. Even at the best of times, the British have placed issues such as Hong Kong in a special and often distant place. For a whole host of reasons, that trend has only intensified. The simple question of how, therefore, the UK should, and can, respond to the very clear continuing changes and transformations in Hong Kong, many of which should be of concern to it, is not an easy one. It can offer plenty of rhetoric, for sure. But in terms of actions, its options are truly limited. On particularly bad days, they seem almost non-existent.

Nothing illustrates this more starkly than the effective expulsion from Hong Kong of *Financial Times* journalist Victor Mallet in late 2018. Mallet's crime was to chair a meeting at the Foreign Correspondents' Club in the city, which was addressed by a supporter of Hong Kong independence. That this happened in clear violation of the spirit, if not the letter, of respect for journalists and their rights to report freely in the city was only the most powerful of a whole list of potential points of opposition to this move. That Mallet now joins activists and even Parliamentarians in having been refused entry to the city points to a trend that looks likely to only intensify.

If the more idealistic projections about Brexit come to fruition, and we see a Britain more attuned to working with a world beyond Europe and trying to develop a new set of international trade and geopolitical relations, then that might mean a deeper engagement with Hong Kong and Hong Kong affairs. But the corollary of this will mean an attempt to gain even more benefits from the rise of a middle class and more economic engagement with the PRC. This will create a whole series of quandaries about how Britain can balance its security needs and its alliances with the US, NATO and others, alongside its desire to simply obtain more investment and make more money from the world's second-largest economy. The simple fact is that Brexit is likely to consume the energies of the business, political and other elites in the UK for years to come. That is more than likely to create not an outward-looking spirit but a more inward-looking one, one that places a priority on pragmatic and tangible outcomes and resists looking at more complicated issues such as support for rule of law and the development of civil society in a place like Hong Kong.

Of course, in the current complicated environment, things will not be so straightforward. Chinese actions and aspirations are now reaching deep into the outside world and being carried far further than even a territory like Hong Kong. The issue that will have the greatest impact on the UK will be the endeavours already starting to appear here of the Chinese government and its various agents attempting to change attitudes and beliefs in Britain itself. "Sharp power"⁴¹ is the term now accepted as the best description of Chinese behaviour over matters which it deems to be of central importance to it. In this area, at least, the UK does need to decide how best to respond, and to do some pre-emptive thinking.

In 1997, however the handover agreement originally went, it clearly involved outcomes that were unexpected and were not contemplated. We should not be caught out again. China can, and will, make demands not just about how Hong Kong affairs are seen in Hong Kong, but also about how they are seen here in the UK. Over the former, for the reasons set out in this chapter, the options for the UK currently are limited – although, because of the complexity of the issues involved, things could quickly change. Over the latter, they are a matter of choice over how we conduct our own affairs in our own space, and how we allow interaction with others. On that we surely have agency, and should decide how best to use it before, even there, we see evidence of being dictated to too.

⁴¹ Christopher Walker, Ludwig Jessica, "The Meaning of Sharp Power: How Authoritarian States Project Influence," *Foreign Affairs*, November 16 2017, available at: <https://www.foreignaffairs.com/articles/china/2017-11-16/meaning-sharp-power> (last visited 3 June 2019).

2.2 The Role of Parliament and Civil Society

Benedict Rogers

Under the terms of the Sino-British Joint Declaration,⁴² signed by then Chinese Premier Zhao Ziyang and British Prime Minister Margaret Thatcher in 1984, the United Kingdom has a right, indeed a responsibility, to monitor the situation in Hong Kong and to hold the Chinese government to account for its governance of the territory, at least for the first fifty years after Hong Kong's handover to China. In particular, the United Kingdom has a responsibility that is not only moral, given our history in Hong Kong, but also legal, enshrined in an international treaty lodged at the United Nations, to ensure that China keeps its promises to the people of Hong Kong and maintains a 'high degree of autonomy' under the One Country, Two Systems principle in which basic freedoms, human rights and the rule of law are protected.

Within that, Parliament and civil society have an important role to play. Just as the British government has a responsibility to monitor the situation in Hong Kong and to hold the Chinese government to account, so Parliament has an obligation to hold to account the British government and to ensure that it is indeed fulfilling its obligations under the Joint Declaration.

How can it do that? First and foremost, the Foreign and Commonwealth Office is mandated to publish to Parliament six-monthly reports on the situation in Hong Kong. The reports are published in the form of written statements to both Houses of Parliament by the Foreign Secretary. For many years these reports were, as the last Governor of Hong Kong Lord Patten put it, "fairly neutral and ... rather anodyne",⁴³ but in recent years they have become more critical and robust – a reflection, of course, of the deteriorating situation in Hong Kong. In the most recent report, covering the period January to June 2018, the Foreign Secretary Jeremy Hunt expressed his concerns about the disqualification of candidates from the Legislative Council, about the threats to freedom of expression and "continued pressure on Hong Kong's high degree of autonomy and on the rights and freedoms guaranteed by the Joint Declaration and enshrined in the Basic Law". In his foreword to the report, the Foreign Secretary stated that "the Sino-British Joint Declaration remains as relevant today as it was when it was signed by the governments of the UK and China more than 30 years ago"⁴⁴. It remains, he added, "a legally binding treaty, registered with the UN", and the United Kingdom remains "committed to monitoring its implementation".⁴⁵

Members of Parliament and members of the House of Lords have the opportunity to debate the six-monthly report if they so wish, to ask questions of the government and to urge further action, although a debate is not necessarily automatic and has to be sought by a particular member. The last time a member sought a debate specifically in response to the six-monthly report was when Richard Graham MP, chair of the All-Party Parliamentary Group for China, did so on 26 March 2016.

But Members of Parliament are not obliged to wait for the six-monthly report. While that report provides a helpful occasion to raise issues, Parliamentarians in both the House of Commons and the House of Lords can initiate debates, either on the floor of the House of Commons as an adjournment debate, or in Westminster Hall, the House of Commons' second chamber.

⁴² Sino-British Joint Declaration – full text available here: <https://www.cmab.gov.hk/en/issues/joint3.htm>.

⁴³ "The Future of Democracy in Hong Kong," the Congressional-Executive Commission on China, November 20 2014, <http://www.cecc.gov/events/hearings/the-future-of-democracy-in-hong-kong>.

⁴⁴ Government of the UK, Six Monthly Report on Hong Kong: January to June 2018, available at: <https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-january-to-june-2018> (last visited 2 June 2019).

⁴⁵ Ibid.

In January 2018 Fiona Bruce MP, Chair of the Conservative Party Human Rights Commission, did exactly that, opening the first debate on democracy in Hong Kong in Westminster Hall in more than two years, to which nine MPs contributed. Fiona Bruce began by noting that:

Last year marked the 20th anniversary of the handover of Hong Kong to China. Pursuant to the 1984 Sino-British joint declaration, the United Kingdom has a responsibility to ensure that the legal, economic and social rights and freedoms guaranteed to the people of Hong Kong under the Basic Law, Hong Kong's constitution, which was derived from the joint declaration, are protected. The UK also has a responsibility to ensure that the one country, two systems principle on which Hong Kong was handed over to China by the UK is respected ... The House of Commons Select Committee on Foreign Affairs has stated that, "the UK has both a legal right and a moral obligation to monitor the implementation of the principles established in the joint declaration."⁴⁶

She also stated that:

The dramatic signs over the past four or five years, and in particular over the past 12 months, are a cause for increasing concern. The 2015 abduction of the Causeway Bay booksellers – one, British citizen Lee Bo, from Hong Kong territory itself – simply, it appeared, for having published books critical of Chinese authority, caused international consternation about the apparent erosion of Hong Kong's autonomy.⁴⁷

The Minister of State responsible for Asia at the Foreign and Commonwealth Office, Mark Field MP, responded to the debate, pledging the United Kingdom's "absolute" and "unequivocal" commitment to its responsibilities under the Joint Declaration. "If the people of Hong Kong and the watching world are to continue to have confidence in 'one country, two systems', it is vital that the high degree of autonomy and the rights and freedoms enshrined in the Basic Law and guaranteed under international law by the Joint Declaration are respected,"⁴⁸ said the Minister. He also stated:

We will not shy away from this. Let me make it clear. Ongoing commitment to these doctrines is not somehow "interference" by the West in Chinese affairs. Maintaining confidence in "one country, two systems" and the rule of law is crucial for Hong Kong and China's own interests, including that city's role as a financial hub for the Belt and Road initiative. Hong Kong's economic system, which is uniquely trusted to bring huge new opportunities into China from all corners of the globe, will only flourish if the peoples enjoy the freedoms and safeguards that will ensure the promotion of their talents and enterprise.⁴⁹

In addition, Members of Parliament can – and do – table written or oral questions to ministers throughout the year. Over the past year, there have been 42 parliamentary questions on Hong Kong, including by Steve Double MP on 4 December 2018, who asked in Foreign and Commonwealth Office oral questions what recent steps the government has taken to monitor and promote the rule of law in Hong Kong as set out in the Sino-British Joint Declaration.⁵⁰ The

⁴⁶ Democracy in Hong Kong, *Hansard*, 23 January 2018, available at: <https://hansard.parliament.uk/commons/2018-01-23/debates/8A12D4FF-14AE-4470-9D1A-5559462C233C/DemocracyInHongKong> (last visited 2 June 2019).

⁴⁷ Democracy in Hong Kong, *Hansard*, 23 January 2018, available at: <https://hansard.parliament.uk/commons/2018-01-23/debates/8A12D4FF-14AE-4470-9D1A-5559462C233C/DemocracyInHongKong> (last visited 2 June 2019).

⁴⁸ Mark Field, Minister of Asia Pacific, Foreign and Commonwealth Office, China and the Rules-based international system, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaaff/612/61208.htm> (last visited 2 June 2019).

⁴⁹ *Hansard*, 4 December 2018, <https://hansard.parliament.uk/Commons/2018-12-04/debates/B6C5C2A8-75C6-4983-8A47-661E79EED3DA/Sino-BritishJointDeclarationRuleOfLaw>.

⁵⁰ *Hansard*, 4 December 2018, <https://hansard.parliament.uk/Commons/2018-12-04/debates/B6C5C2A8-75C6-4983-8A47-661E79EED3DA/Sino-BritishJointDeclarationRuleOfLaw>.

Minister replied by emphasising that “the rule of law and the independence of the judiciary are the foundations of Hong Kong’s continued success and prosperity ... I reassure my hon. Friend that we take very seriously our long-standing and ongoing duty to uphold the joint declaration”. Three other MPs – Catherine West MP, Fiona Bruce MP and the Shadow Minister of State Helen Goodman MP – also contributed supplementary questions on that occasion. Other MPs, including Geraint Davies MP, Sarah Champion MP, have also asked questions about Hong Kong, oral and written, throughout the year, all of which are available in Hansard, Parliament’s written record.

On 17 October 2017, six days after I was denied entry to Hong Kong,⁵¹ Fiona Bruce MP raised a question in Foreign and Commonwealth Office oral questions:

Do Ministers share concern about the apparent continuing erosion of the “one country, two systems” principle in Hong Kong following the disappearances of booksellers, the recent imprisonment of a democratically elected representative and, last week, the refusal of entry into Hong Kong on a purely private visit by UK citizen and human rights campaigner, Ben Rogers, who is watching our proceedings today? If so, what action is the Foreign Office taking?⁵²

The following day she raised the issue again in Prime Minister’s Questions:

Does the Prime Minister share the great concerns that were expressed in this House yesterday, including by Ministers, about the implications for the one country, two systems principle in Hong Kong of the recent refusal of the authorities there to allow Ben Rogers, a UK national, entry? Will the Prime Minister confirm that the Government will work with the Hong Kong and Chinese authorities to ensure that the democratic freedoms in the one country, two systems principle are honoured and preserved?⁵³

Members of the House of Lords may similarly raise oral and written questions. On 24 January 2018, the day before Fiona Bruce’s Westminster Hall debate, the former leader of the Liberal Democrats Lord Ashdown tabled an oral question as follows:

To ask Her Majesty’s Government what assessment they have made of Hong Kong’s autonomy, rights and freedoms, following recently approved changes to the procedural rules of Hong Kong’s Legislative Council, and the refusal of entry into Hong Kong of Taiwanese scholars and the British human rights activist, Benedict Rogers.

After the response from the Minister of State Lord Ahmad, Lord Ashdown asked:

Is the Minister aware that, according to the claims made by the Hong Kong and Chinese authorities, it is an interference in the domestic affairs of China for a British Parliamentarian to visit Hong Kong to assess progress on the joint declaration? Given that the joint declaration is an international treaty lodged in the UN, which places responsibility on both sides to carry it out, will the Minister take this opportunity strenuously to reject that view and ensure that both the Hong Kong and Beijing authorities are duly notified?⁵⁴

Lord Collins, Lord Patten, Lord Alton, Lord Thomas and Lord West all asked supplementary questions on the same occasion.

⁵¹ *BBC*, “UK ‘concerned’ as Hong Kong denies Benedict Rogers entry,” 11 October 2017, <https://www.bbc.com/news/uk-politics-41586529>.

⁵² *Hong Kong Free Press*, “Hong Kong treatment of activist Benedict Rogers ‘utterly scandalous’, says UK speaker”, 17 October 2017, https://www.youtube.com/watch?time_continue=5&v=njHRQTak8Sg.

⁵³ *Hansard*, 24 January 2018, <https://hansard.parliament.uk/Lords/2018-01-24/debates/77283A0B-A895-414C-8B2C-AB9BBC9C5350/HongKong>.

⁵⁴ *Hansard*, 24 January 2018, <https://hansard.parliament.uk/Lords/2018-01-24/debates/77283A0B-A895-414C-8B2C-AB9BBC9C5350/HongKong>.

Early Day Motions are another tool for Members of Parliament. The House of Commons does not have an equivalent of a US Congressional resolution, and Early Day Motions have no binding authority – they are no more than an expression of opinion by the MPs who sign them – but, especially if they attract a significant number of signatures, they can influence the government’s actions. On 13 November 2018, for example, Fiona Bruce MP tabled an Early Day Motion titled ‘Hong Kong Umbrella Movement Trials’, which states:

That this House notes with concern the upcoming trial on 19 November 2018 of nine leaders of the Hong Kong Umbrella Movement, including the co-founders of the Occupy Central campaign Professor Benny Tai Yiu-ting, Professor Chan Kin-man, and Reverend Chu Yiu-ming; is further concerned that they are facing vague and ambiguous charges with each carrying seven years’ imprisonment; condemns the use of common law charges apparently intended to intimidate and silence pro-democracy figures including conspiracy to commit public nuisance, incitement to public nuisance and incitement to incite public nuisance; notes that more than 100 pro-democracy protesters have been charged, and many jailed, on the basis of common law charges which curtail freedom of expression and have been criticised by the United Nations Human Rights Committee; and urges the Government, in view of the UK’s commitments under the Sino-British Joint Declaration, to raise the issue with the Government of Hong Kong and consider further action.⁵⁵

On 5 February 2018, she also tabled an Early Day Motion titled ‘Nobel Peace Prize Nomination for Umbrella Movement’, which read:

That this House welcomes the nomination of Joshua Wong, Nathan Law, Alex Chow and the entire pro-democracy movement in Hong Kong, known collectively as the Umbrella Movement, for the 2018 Nobel Peace Prize, in recognition of their peaceful efforts to defend basic freedoms, strengthen democracy and protect autonomy for Hong Kong guaranteed under the Sino-British Joint Declaration and Hong Kong’s Basic Law; supports the letter released on 1 February by eight Members of the United States Congress and four United States senators to the Chair of the Nobel Peace Prize Committee; and encourages the Nobel Peace Prize Committee to give this nomination serious consideration.⁵⁶

Parliamentary committees, notably the Foreign Affairs Select Committee, provide another avenue for raising the issue of Hong Kong. In 2014 the House of Commons Foreign Affairs Select Committee held an inquiry on Hong Kong thirty years after the Joint Declaration,⁵⁷ and its officers have met with visitors from Hong Kong and spoken out on Hong Kong periodically. Relevant All-Party Parliamentary Groups offer another channel. There is currently no APPG for Hong Kong, but the China APPG is one of the largest and could be used to pursue concerns about Hong Kong.⁵⁸

Outside the Palace of Westminster, Parliamentarians can visit Hong Kong – if they are allowed in. In 2014 the Chairman of the Foreign Affairs Select Committee at the time, Sir Richard Ottaway, was banned from visiting Hong Kong.⁵⁹ He said in Parliament on 2 December 2014:

⁵⁵ House of Commons Foreign Affairs Committee Inquiry, 2014, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2010/hong-kong/?type=Oral%23pnlPublicationFilter>.

⁵⁶ House of Commons Foreign Affairs Committee Inquiry, 2014, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2010/hong-kong/?type=Oral%23pnlPublicationFilter>.

⁵⁷ House of Commons Foreign Affairs Committee Inquiry, 2014, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2010/hong-kong/?type=Oral%23pnlPublicationFilter>.

⁵⁸ All Party Parliamentary Group for China, <https://appcg.org.uk/>.

⁵⁹ “British MP attacks ‘confrontational’ China as Hong Kong protests escalate”, *Daily Telegraph*, 30 November 2014, <https://www.telegraph.co.uk/news/worldnews/asia/hongkong/11263799/British-MP-attacks-confrontational-China-as-Hong-Kong-protests-escalate.html>.

As one who travels more than most, I have become only too aware of the high regard that the world has for the United Kingdom – for what this iconic building stands for, what the Chamber stands for, and what those who sit in it stand for. It is, in a phrase, freedom and democracy: a respect for human rights around the world, and an abhorrence of tyranny. The decision by the Government of China to ban the Foreign Affairs Committee’s visit to Hong Kong is a mistake. It is an attack on the men and women of the free world.⁶⁰

In November 2017, a few weeks after I was refused entry to Hong Kong, Lord Ashdown visited the territory, met with political actors and addressed the Foreign Correspondents’ Club.⁶¹ In January 2018, at a public meeting in the House of Lords, he presented his report on his visit.⁶²

Parliamentarians can use their voice to write op-eds or give interviews to the media, or host or attend events, in Parliament or outside, related to Hong Kong. The Speaker of the House of Commons hosted the launch of a small advocacy organisation, Hong Kong Watch, which I co-founded on 11 December 2017 in Speaker’s House, which was attended by members of both Houses of Parliament.⁶³ Catherine West MP hosted a reception in July 2018 to mark the 21st anniversary of the handover of Hong Kong, at which Lord Patten gave the keynote address. Fiona Bruce MP chaired a fringe meeting at the Conservative Party Conference in Birmingham in October 2018, at which the founder of Hong Kong’s Democratic Party Martin Lee, and Umbrella Movement leaders Benny Tai and Nathan Law, spoke – an event that drew worldwide media attention when a journalist from China Central Television (CCTV), Kong Lin Lin, shouted abuse at the speakers and slapped a volunteer.⁶⁴

Civil society plays an equally vital role in holding the British government to account. In an ideal world, Members of Parliament would pick up these issues without being prompted, but the reality is that the range of issues confronting them each day – from their constituencies, through the legislative agenda and other international events – means that only a handful are likely to follow Hong Kong closely. But when they hear from civil society, they may be more responsive.

It became apparent to me, in 2017, that there was a much lower level of awareness in Parliament of the erosion of Hong Kong’s freedoms and autonomy than I had anticipated, and there were very few civil society advocacy initiatives for Hong Kong in Britain. For that reason, Hong Kong Watch was established. Hong Kong Watch works actively to inform and educate Parliamentarians and to encourage parliamentary action. Of our five Patrons, one, Catherine West, is a serving MP; two, Lord Ashdown and Lord Alton, are in the House of Lords; and one, the former Foreign Secretary Sir Malcolm Rifkind, is a former longstanding MP. In addition to providing research and briefings to members of both Houses of Parliament, we have facilitated meetings for visiting political and human rights actors from Hong Kong with Parliamentarians.

Hong Kong Watch is, to my knowledge, the only civil society organisation in the United Kingdom that is devoted full-time to advocacy for Hong Kong. However, other generalist organisations,

⁶⁰ Foreign Affairs Committee (Hong Kong visit), Emergency Debate, House of Commons, 2 December 2014, Volume 589, available at: [https://hansard.parliament.uk/Commons/2014-12-02/debates/14120247000001/ForeignAffairsCommittee\(HongKongVisit\)](https://hansard.parliament.uk/Commons/2014-12-02/debates/14120247000001/ForeignAffairsCommittee(HongKongVisit)) (last visited 3 June 2019).

⁶¹ Foreign Correspondents Club, “Paddy Ashdown: The Thucydides Trap – China’s Rise and What It Means for World Peace”, 28 November 2011, <https://www.youtube.com/watch?v=aUd5cfG5Df4>.

⁶² *Hong Kong Watch*, Lord Ashdown Report, January 2018, <https://www.hongkongwatch.org/all-posts/2018/1/15/lord-ashdown-report-hong-kong-20-years-on-freedom-human-rights-and-autonomy-under-fire>.

⁶³ *Hong Kong Watch*, “Hong Kong Watch launching on 11 December 2017 with messages of support from Lord Patten, Lord Ashdown and other leading British politicians”, 8 December 2017, <https://www.hongkongwatch.org/all-posts/2017/12/6/press-release-hong-kong-watch-launch>.

⁶⁴ “Chinese journalist Kong Lin faces arrest over ‘Tory slap’ claim”, *BBC News*, 18 April 2019.

including the Henry Jackson Society, and groups such as Amnesty International and Human Rights Watch, also have a role to play in ensuring that Parliamentarians are better informed and equipped to fulfil their obligations to speak out for Hong Kong and to hold the British government to account. That is why the two events that the Henry Jackson Society has organised on Hong Kong so far are so important. Indeed, the event that the Henry Jackson Society organised in June 2017 to mark the 20th anniversary was reportedly the only such event in Parliament. It is extraordinary that there was not more attention paid to that anniversary.

Britain – through its government, Parliament and civil society – has a responsibility to Hong Kong. This chapter has outlined some of the ways in which Britain can fulfil its obligations, even though it is very clear that in 2018, since the establishment of Hong Kong Watch, the level of activity for and attention to Hong Kong in Parliament has increased significantly, there is much more to do. As Hong Kong’s freedoms and autonomy are increasingly threatened and eroded, we must ensure that civil society does everything possible to remind Parliament of the promise made by the British Prime Minister in 1996, Sir John Major, who told Hongkongers that “if there were any suggestion of a breach of the Joint Declaration, we would have a duty to pursue every legal and other avenue available to us”⁶⁵. Hong Kong, he promised, “will never have to walk alone”.⁶⁶ We must all do whatever we can to ensure that we live up to that promise.

⁶⁵ John Major Archives, Speech at Hong Kong, March 3 1996, available at: <http://www.johnmajorarchive.org.uk/1990-1997/mr-major-hong-kong-speech-3-march-1996/> (last visited 3 June 2019).

⁶⁶ AP, “Major promises Hong Kong ‘You’ll Never Walk Alone’”, 4 March 1996, <https://www.apnews.com/a9835c28b911954a02cb1303ca5eb01f>.

2.3 The United Kingdom's Moral and Legal Obligations Towards Hong Kong

Milia K. K. Hau

The White Paper accompanying the release of the draft Sino-British Joint Declaration issued on 26 September 1984 stated that the handover was “not a choice which Her Majesty’s Government have sought to impose on the people of Hong Kong. It is a choice imposed by the facts of Hong Kong’s History.”⁶⁷ While the interpretation of history may be bent to serve a political narrative, the facts were that Britain’s only legal and historic obligation was the return of the New Territories upon the ending of a 99-year lease in 1997. The handover of British colonial subjects, and a predominantly refugee people, to the very authoritarian dictatorship from which they had escaped was agreed on conditions for which the UK continues to be legally obliged. And, consistent with the spirit of this agreement, the UK has also a moral obligation to both democratic development in Hong Kong and to the guaranteeing of those rights and freedoms that are foundational to the way of life enjoyed by the people of Hong Kong.

There is a consensus among historians and political scientists in Hong Kong that the lack of democratic development in Hong Kong, both before and after the handover, has to a large extent been a result of pressure from the PRC. It was both British government policy and a legal right under the United Nations for all colonies to undergo democratic reform as part of the process of decolonisation, often in preparation for independence. However, an independent Hong Kong was never an option acceptable to the PRC, and was therefore not considered by the UK. Unique among British colonies, and contrary to the stated moral and political position of the UK government, the people of Hong Kong were not given any meaningful say in the ending of British rule, nor were political and democratic institutions allowed to develop.

The proposed gradual democratisation of Hong Kong through democratic reforms was one of the reasons Members of Parliament across political parties approved the government’s intention to sign the Joint Declaration in 1984. The two main debates in the House of Commons on Hong Kong in May and December 1984 emphasised democratic reform as part of the handover package, and the Hong Kong government’s plans to democratise Hong Kong were well timed with the publication of the Green Paper and the White Paper. In recognition of the PRC’s position, these proposals did not extend to changes to the executive-led colonial political system in Hong Kong, which the PRC would inherit after 1997.

In 1984, Governor Edward Youde, without opposition from the government of Deng Xiaoping, set the Hong Kong government on the course of constitutional reform. This would be an embodiment of the idea of “Hong Kong people ruling Hong Kong” after the handover. A Green Paper entitled ‘The Further Development of Representative Government’ was issued by the Hong Kong government in July 1984, stating the goal of reform as being, “To develop progressively a system of government the authority for which is firmly rooted in Hong Kong, which is able to represent authoritatively the views of the people of Hong Kong, and which is more directly accountable to the people of Hong Kong.”⁶⁸

Four months later, in November 1984, a White Paper published by the Hong Kong government proposed a controlled legislature made up of indirectly elected seats in 1985, with the addition

⁶⁷ *A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Future of Hong Kong*, 26 September 1984, p.8.

⁶⁸ Green Paper: The Further Development of Representative Government in Hong Kong, 1984, available at: <https://archive.org/details/greenpaperfurthe00hong> (last visited 2 June 2019).

of directly elected seats by 1988. The end goal was to build up a “significant number of directly elected members in 1997”⁶⁹. Direct elections were not to take place immediately, because, the Hong Kong government claimed, “there was strong public support for the idea of direct elections but little support for such elections in the immediate future.”⁷⁰ Meanwhile, a clause on democracy in Hong Kong was included in the Joint Declaration, which states, “.The legislature of the Hong Kong Special Administrative Region shall be constituted by elections”⁷¹ Through the addition of this clause and the Green Paper and White Paper, the Foreign and Commonwealth Office in 1984 gave the impression of genuine democratic reform before the handover was not only possible but also consistent with the existing historic narrative of the government in Beijing.

By 1992, differing interpretations of this admittedly ambiguous clause would cause tensions between Britain and the PRC, and in particular between a clique within the Foreign and Commonwealth Office centred on Sir Percy Cradock and Chris Patten, the last Governor of Hong Kong. In 1993, Cradock revealed during the Foreign Affairs Select Committee hearings that Chinese officials were firmly against the language of democracy in Hong Kong. On “Hong Kong people ruling Hong Kong”, Cradock described the PRC Government’s aversion to democratic reforms. “They see it as a virus,”⁷² he stated, as there existed the possibility that democracy in Hong Kong might spread to PRC territories. It is worth noting that, following the events of June 1989, the position of the PRC government and that of Deng Xiaoping towards political liberalisation significantly changed. However, questions may also be asked as to whether Cradock, as the UK’s chief negotiator, and Foreign Secretary Geoffrey Howe had withheld information on the future of Hong Kong at the time of the parliamentary debates on the government’s intention to sign the Joint Declaration.

Under the circumstances in which the Joint Declaration was approved by the British legislature, Britain has a legal, moral and historic obligation to either support the democratisation of Hong Kong or to ensure that the individual freedoms of Hong Kong people are respected. It cannot do neither.

Britain also continues to have a direct responsibility towards British Nationals (Overseas) (BN(O)), a status reserved for Hong Kong British Nationals. In 2007 there were around 3.4 million people in Hong Kong who were BN(O), though a very small proportion continued to hold a valid British passport. However, since the 2014 Umbrella Movement there has been a steady increase in the number renewing their BN(O) passport. As of 2018, just under 160,000 people have a valid BN(O) passport.

Given the context of mounting international concerns, which are both serious and legitimate, of the deterioration of the rights and freedoms supposedly guaranteed by the Basic Law, and the increasingly politicisation of the judiciary, and in the management of the police and academic institutions, there is a strong moral case to be made that the UK ought to do more to ensure that the security and rights of BN(O)s are respected, and to offer to those who have renounced Chinese nationality the opportunity to register for British citizenship.

⁶⁹ The Hong Kong Government (1984), *Green Paper: The Further Development of Representative Government in Hong Kong*, Hong Kong: Government Printer.

⁷⁰ *White Paper: The further development of representative government in Hong Kong* (Hong Kong: Government Printer, 1984), p.3.

⁷¹ Sino-British Joint Declaration (1984), Clause 4, *Wikisource*, available at: https://en.wikisource.org/wiki/Sino-British_Joint_Declaration (last visited 1 June 2019).

⁷² House of Commons, Foreign Affairs Committee, *Relations between the United Kingdom and China in the period up to and beyond 1997*, Minutes of Evidence (London: 1993). See also House of Commons Library (1994) Research Paper 94/44, Hong Kong and Democracy, available at: <file:///C:/Users/Barry%20MC/Downloads/RP94-44.pdf> (last visited 2 June 2019).

The British Nationality (Hong Kong) Act 1997 aimed to deal with the potential instances of statelessness that were likely to occur after the handover, as BN(O)s do not automatically enjoy the right of abode in the UK. The PRC believes all peoples they consider to be ethnic-Chinese to be PRC nationals - a unilateral imposed and illegal position increasingly being enforced through the abduction of ethnic-Chinese foreign nationals, including a British citizen, from both within Hong Kong and abroad - which has meant that Hong Kong British subjects of ethnic-Chinese roots cannot freely choose their allegiance to Britain; since ethnic-Chinese BN(O)s are automatically considered Chinese nationals by the PRC, they do not qualify for British citizenship under the 1997 Act.

Britain's responsibility towards individuals from Hong Kong extends beyond those who were born as British Nationals. It is well within the authority of the British government to administratively support BN(O)s as a matter of internal affairs. The British government continues to have legal obligations not only to monitor but also to act in defence of an agreement that not only ensured a smooth transition of sovereignty in 1997 and allowed Britain to exit from its last colony of significance with pride; the agreement was also meant to provide both moral and legal guarantees to the people of Hong Kong, British nationals and subjects, whose future Britain had handed to a political regime from which the majority had fled.

SECTION 3: CONCLUDING REMARKS

Evan Fowler (方禮倫)

It is important to stress that the Hong Kong Special Administrative Region (HKSAR) is not the PRC, and that Hong Kong continues to enjoy freedoms and a degree of administrative and political autonomy not enjoyed in the rest of China. However, as this report shows, this autonomy and these freedoms, while guaranteed by law, are facing serious challenges from the state.

Indeed, since this report was compiled the Hong Kong government has attempted to push through a bill to change the territory's extradition laws to allow ad hoc extraditions to countries and jurisdictions with which Hong Kong does not have such agreements, including mainland China. The bill would transfer authority over extradition requests from Hong Kong's Legislative Council to the Chief Executive, and leaving the courts with a "limited role in reviewing and rejecting the extradition process" and insufficient procedures to protect human rights.⁷³ This has drawn international condemnation, including from the UK, as well as from business and legal bodies within Hong Kong, and drew the largest street protest since 2014.⁷⁴

Hong Kong's growing challenges are not only at the constitutional level, where core terms and concepts, including universal suffrage, the rule of law and national security, have been reinterpreted to serve a new political narrative. The threat to Hong Kong's freedoms and way of life is also seen on the streets, where the increasing influence of the United Front and other semi-official public organisations and bodies have played and continue to play an increasingly important role in shaping the way Hongkongers relate to authority, the media and the rule of law. This has changed the nature of politics in Hong Kong since the protests of 2014 as much if not more than the rise of localism.

It may seem that on balance the terms of the 1982 Sino-British Joint Declaration have on the whole been respected, as far as Beijing understands them, and that Hong Kong continues to enjoy a degree of press freedom and the rule of law. However it would be wrong to presume a conclusion. The picture is far less certain given the changes – social and psychological as well as economic and political – that are affecting the Hong Kong community on many levels. Placed within the context of an increasingly authoritarian and nationalistic PRC, the challenges to Hong Kong's freedoms and institutions acquire a new meaning.

Today, as the PRC emerges onto the world stage, the often subtle undermining of Hong Kong's liberal framework and institutions becomes more significant. The deconstruction of Hong Kong's nascent civil society through control of the media, and in the name of pragmatism, economic benefit and reinterpretation of the rule of law, should be seen as a warning.

The UK, as the only other signatory to the Joint Declaration, must be clear in both its legal obligation to ensure that the terms of the Sino-British Joint Declaration are adhered to not only in words but also in spirit. The UK, given its historic ties to Hong Kong and the decision it took not to give the people of Hong Kong a voice in their future after 1997, must lead the international community that has a moral obligation to ensure both international law and the

⁷³ Hong Kong Bar Association, 2 April 2019, "Observations of the Hong Kong Bar Association ("HKBA") on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019", <https://www.hkba.org/sites/default/files/HKBA%20Observations%20on%20FOMLACM%20Bill%202019%20%28Final%29.pdf>.

⁷⁴ See Nicolle Liu, "Why Hong Kong's proposed extradition law is drawing fierce opposition", *Financial Times*, 22 May 2019, <https://www.ft.com/content/2063019c-7619-11e9-be7d-6d846537acab>; and Jessie Pang, Greg Torode, "Thousands take to Hong Kong Street to protest new extradition laws", *Reuters*, 28 April 2019, <https://www.reuters.com/article/us-hongkong-politics-extradition/thousands-take-to-hong-kong-streets-to-protest-new-extradition-laws-idUSKCN1S405E>.

fundamental human rights of the Hong Kong people are respected. This includes the right to freedom of thought and expression.

This report provides an overview of the situation in Hong Kong in four core areas of concern, and the continuing responsibilities that the UK has to Hong Kong and the Hong Kong people. For me it is a personal report, not only because I am a contributor, but because all those writing on Hong Kong do so from the position of having been at the centre of the storm. Each have been affected personally by the changes of which they write about.

It is my sincere hope that this report will serve as the basis for a broader and continuing discussion, and the adoption of a clearly defined and articulated policy towards Hong Kong, to be acted upon with conviction and in a manner consistent with and representative of British values. The UK owes it not only to Hong Kong, but to itself to assert its rights to oversee the implementation of One Country, Two Systems in Hong Kong, and to remain vigilant and to hold Beijing to account.

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