

Hong Kong: A Land Which Neither Let's You Stay, Nor Let's You Leave

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Unless someone is living under a rock or has taken a complete social media detox, only then wouldn't they be aware of the plight of the Hongkongers resisting the imposition of laws made by the officials sitting in Beijing. It can be said that Hong Kong has long been a topic of debate as well as a land long desired by all. The last imperial dynasty of China, the Qing dynasty first ceded it to the British Empire back in 1842 while ending the First Opium War¹ and through what is formally called the *Treaty of Nanjing*²; Hong Kong became a British Crown Colony. After winning the Second Opium War Britain was granted the *New Territories Lease*³ for 99 years, starting 1898. Hong Kong was later occupied by Japan during World War II (from 1941 to 1945). However, by the end of 1945 Hong Kong was liberated from Japan and brought back under the curtain of the British Empire with aid from the Chinese troops.

The British Prime Minister Margaret Thatcher and her Chinese counterpart Premier Zhao Ziyang signed the *Sino-British Joint Declaration*⁴ in 1984 and on July 1, 1997, the *Handover of Hong Kong* to China

¹ Kenneth Pletcher, *Opium Wars – Chinese Wars*, Britannica (Feb. 05, 2020), www.britannica.com/topic/Opium-Wars#ref326269.

² Satyavrat Nirala, *Treaty of Nanjing – China-United Kingdom [1842]*, Britannica (Sep. 01, 2015), www.britannica.com/event/Treaty-of-Nanjing.

³ Chi-Keung Leung, *Hong Kong – Administrative Region, China*, Britannica (Jan. 25, 2021), www.britannica.com/place/Hong-Kong/Manufacturing.

⁴ Gary Cheung, *What is Sino-British Joint Declaration and what does it have to do with Hong Kong extradition crisis*, South China Morning Post (Jul. 04, 2019), www.scmp.com/news/hong-kong/politics/article/3017318/explainer-what-sino-british-joint-declaration-and-what-does.

took place and the *Hong Kong Basic Law*⁵ came into being. This event incited a wave of emigration from Hong Kong; however, as the saying goes, history is about to repeat itself.

As is anticipated, Hong Kong is to witness major emigration from its lands, again. The Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 or as colloquially popular the 2019 Hong Kong Extradition Bill⁶ caused severe civil unrest in Hong Kong which marked the beginning of months-long protests. Alternatively, the draconian and repressive National Security Law passed in 2020 added fuel to the flame. This law made secession (breaking away from mainland China), subversion against the Chinese government along with terrorist activities and collusion with foreign forces as threats to national security.⁷ This act also demands the surrender of travel documents in certain circumstances.⁸ This act since its inception on July 1, 2020, has already resulted in the arrests of over 100 people including prominent activist Joshua Wong and media tycoon Jimmy Lai.⁹ Along with the vaguely defined terms of the bill, the root of the problem swells to the fact that this law was made by ‘China’s rubber-stamp parliament’, the National People’s Congress and not by the independent leadership of Hong Kong. As China tightens its grip on the semi-autonomous city, an increasing number of pro democracy politicians and activists have already gone into exile¹⁰ and furthermore, it has also acted as a catalyst for the mundane Hongkongers to begin contemplating emigration. However, it seems as if even this option has also been snatched away from civilians.

The government’s new proposal radically modifies the immigration and emigration policy of the city. The said proposal seeks to add Section 6A to the existing law¹¹ which will essentially ‘empower’ the Secretary of Security to make regulations authorizing the Director to direct that a particular passenger

⁵ *Hong Kong: what is the Basic Law and how does it work?*, BBC News (Nov. 20, 2019), www.bbc.com/news/world-asia-china-49633862.

⁶ Mike Ives, *What is Hong Kong’s Extradition Bill?*, The New York Times (June 10, 2019), www.nytimes.com/2019/06/10/world/asia/hong-kong-extradition-bill.html.

⁷ *Hong Kong Security Law: What is it and is it worrying?*, BBC News (June 30, 2020), www.bbc.com/news/world-asia-china-52765838.

⁸ *What the proposed immigration law for Hong Kong is, and why it’s worrying*, NDTV News (Feb. 13, 2021), www.ndtv.com/world-news/whats-the-proposed-immigration-law-of-hong-kong-and-why-is-it-worrying-2369690.

⁹ *Ibid.*

¹⁰ *Hong Kong: alarm over proposed law that could ban anyone from leaving*, The Guardian (Feb. 13, 2021), www.theguardian.com/world/2021/feb/13/hong-kong-alarm-over-proposed-law-that-could-ban-anyone-from-leaving.

¹¹ Immigration Ordinance (Cap. 115), www.elegislation.gov.hk/hk/cap115.

or crew member may or may not be allowed to board a carrier.¹² Furthermore, via this amendment, an advanced passenger information system will be set up channelling the data of people arriving in the city directly to the immigration department to make denial of entry or detaining at arrival easier.¹³ Another key feature of this bill is the increase in the penalty for airlines bringing such claimants into the city. To reflect the gravity of the breach, a maximum of HK\$100,000 (US\$ 12,900) is set.¹⁴

This move by the government comes after the controversy regarding Youtuber Bob's Your Uncle's recent travel review. On December 14, 2020, the Hong Kong Youtuber reviewed Virgin Atlantic's Upper-Class Flight to London wherein he spotted a group of people without luggage lingering around the airport. He commented, "*Rarely do you see passengers flying long haul without a single carry, not even a backpack!*" and continued that, "*Less than 30 years (after the Handover of Hong Kong in 1997), and we're already on par with Pyongyang.*"¹⁵ Since the release of this video, it's believed that the airport is under constant surveillance by the National Security Police. Moreover, Secretary for security, John Lee has told the Legislative Council of Hong Kong that amendments to the existing firearm law will also be required to allow border guards to carry guns.¹⁶

Over the growing concerns by such statements, former opposition politician Lam Cheuk-ting has commented that "*(Exit bans) would seriously violate the rights of Hong Kong's residents to come and go freely, as the director of immigration will be able to restrict individuals' movements without the need for any court order.*"¹⁷

The United Kingdoms, Canada¹⁸ and Taiwan¹⁹ have already announced plans to let in the individuals willing to leave Hong Kong to escape the wrath of the Chinese government. It is believed that the

¹² Chan Yun Nam, Lu Xi & Lau Siu Fung, *Planned changes to Hong Kong Immigration law sparks fears of exit curbs*, Radio Free Asia (Jan. 20, 2021), www.rfa.org/english/news/china/hongkong-immigration-01202021083931.html.

¹³ *Ibid.*

¹⁴ Natalie Wong, *Hong Kong Security Bureau accuses Bar Association of causing confusion by claiming law change let's authorities stop residents leaving city*, South China Morning Post (Feb. 14, 2021), www.scmp.com/news/hong-kong/law-and-crime/article/3121674/bar-association-causing-confusion-saying-proposed-law.

¹⁵ *Supra* note 12.

¹⁶ *Supra* note 12.

¹⁷ *Supra* note 12.

¹⁸ Craig McCulloch, *Canada eases immigration from Hong Kong*, VOA News (Feb. 12, 2021), www.voanews.com/americas/canada-eases-immigration-hong-kong.

¹⁹ *Supra* note 12.

UK is said to introduce a new visa to 70% of the population of Hong Kong, which roughly amounts to 5.4 million individuals, to come and live in the UK. An estimated 300,000 people are expected to take up this offer.²⁰ However, the newly proposed immigration policy would only make it tough for civilians to leave the country.

Recently, the influential Hong Kong Bar Association (HKBA) wrote²¹ to the Legislative Council citing the need for such legislation barring entry and exit of people is “difficult to understand²²”. The Association further expressed its concern and stated, “*About the proposal to confer an apparently unregulated power to the Director to prevent Hong Kong residents and other individuals from leaving Hong Kong. It is particularly troubling that the grounds on which such an intrusive power may be exercised are not stated in the proposed legislation, and no explanation for why this power is necessary, or even how it is intended to be used by the bureau, is set out.*”²³

To this, the Hong Kong’s security bureau refuted stating, “*In regard to the recent written submission by the HKBA to the Legislative Council, in which the association’s standpoint about the relevant provision failed to reflect correctly to the objectives of the provision and relevant facts, and led to unnecessary misunderstanding, we feel disappointed.*”²⁴ The Bureau further asserted that under the Convention on International Civil Aviation, immigration authorities can request airlines to not allow certain individuals to board the plane. The statement added that this is to bar potential asylum seekers from entering Hong Kong.²⁵ Alternatively, it is being claimed that the freedom to travel as enlisted under article 31²⁶ of the Basic Law and Article 8 (2)²⁷ of the Bill of Rights will be “maintained”.

²⁰ Michael Bristow, *The Hong Kong migrants fleeing to start new lives in the UK*, BBC News (Jan. 19, 2021), www.bbc.com/news/world-asia-china-55357495.

²¹ Further Submission of the Hong Kong Bar Association on the Immigration (Amendment) Bill 2020, www.hkba.org/sites/default/files/Immigration%20%28Amendment%29%20Bill%202020%20-%20Clause%203%20-%20Further%20Submission%2011.2.2021.pdf.

²² Supra note 8.

²³ *Hong Kong lawyers oppose greater powers to immigration director to stop residents from leaving the city*, Business World (Feb. 13, 2021), www.businessworld.in/article/Hong-Kong-lawyers-oppose-greater-powers-to-immigration-director-to-stop-residents-from-leaving-city-/13-02-2021-377336/.

²⁴ Supra note 14.

²⁵ Supra note 14.

²⁶ Article 31- “*Hong Kong residents shall have freedom of movement within the Hong Kong Special Administrative Region and freedom of emigration to other countries and regions. They shall have freedom to travel and to enter or leave the Region. Unless restrained by law, holders of valid travel documents shall be free to leave the Region without special authorization.*”

²⁷ Article 8 (2) – Everyone shall be free to leave Hong Kong.

It's fascinating to see the lengths that the officials would go to make it seem that a despotic and repressive, such as this as immigration policy, is right, just and fair and not autocratic, unjust and unfair. The modern world which preaches itself as being the ideal one has once again overlooked the principles that it has set for itself. The said immigration proposal not only violates the national laws and rights guaranteed to the Hongkongers but is also in clear violation of Article 13 (2)²⁸ of the *Universal Declaration of Human Rights*; it could potentially re-victimise the civilians trying to flee torture and persecution. It's only a matter of time till a government that is made for the people, by the people and from the people is crumpled by the people themselves and as Aldo Leopold has said –

“A thing is right when it tends to preserve integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.”²⁹



²⁸ Article 13(2)- “Everyone has the right to leave any country, including his own, and to return to his country.”

²⁹ Daniel Christian Wahl, We need a land ethic for economic life, Medium (Mar. 11, 2018), medium.com/age-of-awareness/we-need-a-land-ethic-for-economic-life-f81297216199.