XU Liang/Xin Hua **Hong Kong, Zhuhai, Macao Bridge/Tunnel System, 55 km long**

HONG KONG, CHINA

The Tides of History

by Bill Paton 2 July 2020

"Hong Kongese, especially youths, are caught in the tide of history, yet reintegration into China remains an amazing opportunity. Hong Kong is one of only two territories in history (along with Macau), ever to cross what is becoming the world's greatest divide. Hong Kong has gone from being part of the greatest empire in world history to part of the greatest economic rise in world history."

The United States and most Western countries are accusing China of violating the rights of Hong Kong residents by passing a new national security law,

decided at China's National People's Congress in May 2020. The new law, introduced 1 July, aims at selected offences including sedition, secession, terrorism and foreign political interference in Hong Kong's affairs. The United States is threatening to pass as many as three laws aimed at punishing what it called Beijing's 'interference' in Hong Kong's affairs. European Union leaders urged China to drop the new Hong Kong national security law or risk 'very negative consequences' in the words of European Commission President Ursula von der Leyen.

Most citizens of Western countries believe that such accusations are well-founded and feel confident that their governments are standing up for human rights and democracy in Hong Kong. To answer the charge, we will need to examine the wording of the Sino-British Declaration on Hong Kong's return, along with other details, but they can only be well understood in their historical context.

British Cannons

Emperor Qianlong wrote to King George in the late eighteenth century to ask that Britain not trade in opium in China but his letters went unanswered. China eventually seized 20,000 chests of opium or 1.4 million kilograms from the stubborn British traders. London's reaction was indignation, sending an armed force into China. They could not afford to lose their opium profits, which had reversed their balance of payments deficit with China caused by drinking more and more Chinese tea.

Gunpowder and cannons were both Chinese inventions but once Europeans had improved cannon metallurgy, they were able to use the weapons to defeat their inventors, winning the First Opium War. In 1841, China was forced to sign the Treaty of Nanking giving various trading rights to Britain together with Hong Kong, and even compensation to the British for their lost drugs.

A Second Opium War came two decades later, this time with Britain, France and other countries all allied against China. Beijing itself was overrun and the old Summer Palace (Yuan Ming Yuan), was sacked. China was later obliged to sign further settlements, leasing Macau to Portugal and Hong Kong to the British for 99 years, together with Kowloon and the New Territories.

China's last Emperor was deposed in 1911, beginning a long civil war which was suspended to unite and drive out a huge Japanese occupation, and was then resumed. The communist revolution triumphed and established the People's Republic of China in 1949. Hong Kong and Macau remained leased to the British and Portuguese respectively and Taiwan remained in the hands of the defeated Republican forces led by Chiang Kai-Shek, backed by American troops.

Hong Kong progressively became a highly successful trade and financial centre serving as a gateway to mainland China.

Colonial Hong Kong and the People's Republic of China

Colonial Hong Kong's Governor directed the government, commanded the armed forces and presided over both the Executive Council and the Legislative Council. He appointed the Executive Council from among the elite, along with half of the Legislative Council. The other half were government officials. He was empowered to create laws after listening to the advice and later 'obtaining the consent' of the Legislative Council. By 1966 Legco had 13 government official members and 13 unofficial members appointed by the Governor.

By the 1970s, there was great uncertainty about the future of Hong Kong and Macau because of the coming expiration of the leases to Britain and Portugal in 1997 and 1999. While China made it clear that there would be no extension of the leases, they agreed that signing handover Agreements well in advance would provide reassurance. Only after Britain had signed this Sino-British Joint Declaration with China in 1984, did they begin a process of democratising the Legislative Council, beginning with representatives of different groups. The people of Hong Kong did not have a vote and were not allowed to legally demonstrate or protest.

The Declarations with Britain and with Portugal both stipulated that local governments of the two territories would, in the future, report directly to Beijing. China announced that it would operate "one country, two systems". This innovation granted the ex-colonies "a considerable degree of autonomy" including separate

legal systems and local political systems passing their own legislation. However, China would appoint the Hong Kong Chief Executive and directly control Defence and Foreign Affairs, and would also pass legislation on any other matters judged to fall outside the territories' local jurisdiction.

After a century and a half of British rule, a large cultural gap had been created between Hong Kong and the mainland. This was true to a lesser extent in Macau as well but there Portugal had followed a more gracious course than Britain, facilitating Macau's successful re-integration.

Britain chose a different path. With only five years remaining of Britain's rule, they sent an abrasive last Governor to Hong Kong, Chris Patten, who soon raised the political temperature to a boil. In 1995, the soon-to-be-defunct Hong Kong constitution was altered to allow for elections of the Legislative Council, including for the first time the direct election of some geographical representatives in the Legislative Council, amounting to one third of members. Legco had thus been fully elected for the first time in history just 21 months before the British were to hand Hong Kong back to China. These elections conflicted with the Basic Law which China had already passed in 1990 for Hong Kong's governance after 1997.

Citizens of most Anglophone developed countries do not fathom how deeply China's history impresses upon its people. The capture of Hong Kong is one of the key events in what Chinese know as China's 'century of

humiliation' and these final acts by Britain only added to the sting.

Westerners, in contrast, mainly saw Patten's efforts as a noble attempt to guarantee Hong Kongese a freer future. British people generally believe that their own style of government is the best in the world and that promoting it is a noble cause. They believe that China's political system is wrong and theirs is right.

Putting on such a show of defiance at the end also reduced the pain from what was, for Britain, the conclusion of their once great colonial past. Only a few British islands and other territories remain from that empire, including the Falkland Islands off Argentina's coast, St. Pierre and Miquelon off Canada's coast, Gibraltar off Spain's coast, Akrotiri and Dhekelia on the coast of Cyprus and a scattering of other islands in the Caribbean and North and South Atlantic.

The Legal Foundations of Hong Kong Today

The post-1997 legal foundations of the Hong Kong Special Administrative Region are: a) the Constitution of the People's Republic of China, and b) the Basic Law, passed in 1990 by the Chinese government. On this basis there is a structure of Hong Kong laws, as well as laws passed under Annex III of the Basic Law quoted below. The Sino-British Declaration of 1984 remains a valid Agreement between China and the UK which had guided the handover in 1997.

The relevant clauses of the Sino-British Joint Declaration are:

> *"1. The Government of the People's Republic of China declares that to recover the Hong Kong area […] is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.*
>
> *2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997."*

Also:

> *"12. The above-mentioned policies of the People's Republic of China regarding Hong Kong […] will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will re-main unchanged for 50 years."*

The Basic Law then reads:

Article 18

> *"The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.*
>
> *National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall*

be applied locally by way of promulgation or legislation by the Region.

The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.

In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region.*" [emphasis added]*

The Sino-British Joint Declaration did not give Britain a role in its interpretation or implementation. It was an agreement on the complete transfer of power. Implementation of the Agreement is up to China, which should of course fully respect it. The Basic Law, passed subsequently, is a wholly Chinese law, not an international agreement.

It is intriguing that Beijing, though cautious, was not opposed to the idea of Hong Kong enjoying universal suffrage:

Article 45

> *"The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.*
>
> *The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures."*

Deng Xiaoping once described such evolutionary policy development as 'crossing the river by feeling the stones.' While Beijing was open to popular elections it would wait and see how things progressed. Of course, a one-party state did not wish multiple political parties to nominate candidates for Chief Executive. Instead, a nominating committee would vet candidates, then elections with universal suffrage would be held to elect one, and the winner formally appointed by the Standing Committee. Even with these conditions, China had granted Hong Kong a chance for a greater degree of electoral democracy, including universal suffrage, than Britain ever had.

This experimental approach used in China for social, economic and even political development is also little understood in the West. New policies are often tested

in one or two cities or provinces first. The last four decades of Chinese history have been characterised by such experimentation, just as was policy on Hong Kong's future.

Unfortunately, the careful phrase "*ultimate aim"* was taken by many as a definite promise. In contrast, the words *"in the light of the actual situation in […] Hong Kong and in accordance with the principle of gradual and orderly progress"* were forgotten. A quest for Beijing to 'keep its promise' has been the rallying cry of protesters and their Western supporters, yet the wording in the Basic Law and Agreement is clear in saying 'we will see how things go'.

Instability

Progress was definitely not gradual and orderly. In 2003, when Hong Kong's government tried to pass the national security law – as required under Article 23 – large demonstrations broke out. Hundreds of thousands took to the streets in protest, believing that such a law would limit their rights and the draft law was scrapped.

The other main issue was universal suffrage. In 2007, the Standing Committee in Beijing stated that the plan was to have universal suffrage in the elections for Chief Executive and Legco in 2017, giving nearly everyone in Hong Kong a vote. Thereafter, Beijing became nervous about some possible candidates who

openly favoured secession. Following a five-month consultation in 2014, a State Council White Paper stated that while Beijing was planning universal suffrage in Hong Kong, it was opposed to unpatriotic candidates.

The constitution of China, as in most states, does not provide a path for secession of a part of their territory. Worldwide, attempting to separate a part of the country is in most places illegal. Not so long ago, Spain handed down 100 years of prison sentences to the elected leaders of Catalonia who dared in 2017 to hold a referendum on the independence of Catalonia from Spain. Ninety percent of votes cast reportedly favoured separating from Spain. How would Spanish leaders have reacted if China's leaders had openly supported the 'rights' of their secessionist movement?

The Standing Committee next clarified that voters in the 2017 elections would choose among two or three candidates nominated by the 1,200-member nominating committee as outlined in the Basic Law. Activists pressed for a completely Western-style electoral system, arguing that there was too much control of the nomination process. Demonstrators took to the streets in what was to become the 'Occupy Central' protests, blocking key arteries in the city for months with growing violence.

Beijing held another consultation for several more months the following year, 2015, and then published its plans for the 2017 elections. The plan remained much the same as before – universal suffrage voting

for candidates nominated by a majority of the nominating committee, as contained in the Basic Law.

Thereafter, the growing unrest in Hong Kong in opposition to its proposals made China's government reticent. The stones were too slippery and the current strong. Minds changed and it was decided that the prudent course would be to let the nominating committee elect the Chief Executive in 2017. Universal suffrage would be only for the election of Legco. Ironically, the protests had the outcome of undermining an important step towards the very democratization they sought.

The 2019 Protests

Protests began again in June 2019, this time opposing a new law to allow extradition to 85 countries as well as mainland China. A suspected criminal cannot be extradited from Hong Kong to these countries. There is no mechanism to respond to many countries if they request Hong Kong to arrest and extradite a suspect to face trial. Even a suspected murderer whose home country requests extradition is safe and free on the streets of Hong Kong. He or she could not even be extradited to mainland China. While China is accused of not fully respecting 'Two Systems', many seemed to have forgotten the first part of that phrase, 'One Country'.

Westerners and the Hong Kong protesters believe that this law will be exploited by Beijing to suppress

dissent. Western media often run stories about dissidents arrested in China for speaking out, conjuring an image of an Orwellian China. Many Hong Kong youths and many Westerners think that Beijing intends to have Hong Kong protesters extradited to China to face trial.

Extradition under the draft bill followed a standard formula used worldwide, including in most Western countries. Extradition can only be for criminal offences subject to at least a two-year prison sentence. A Hong Kong court first has to rule that the alleged crime is also a criminal offence under Hong Kong law. Next, the Hong Kong judicial system would itself decide, unilaterally, whether the evidence presented with the request is sufficient to warrant a trial under Hong Kong law. Only then could a suspect be extradited, after final approval by Hong Kong's Secretary for Justice.

None of these detailed safeguards meant much to protesters or the Western media. The draft must have remained unread by all but a few and large numbers of people were more convinced than ever that the law was designed to extradite protest leaders to China. It all only made sense on an emotional level, and emotions were what prevailed on the streets, rocking Hong Kong for months to come.

Aggravating the situation was the fact that many believed that Chinese mainland police had detained the partners who owned a Hong Kong bookshop, *Hong Kong Causeway Bay Books*. The store sold

some books that alleged corruption among China's leaders. Lam Wing-Kee, part-owner, claimed he was arrested after crossing into mainland China and his story circulated widely in Hong Kong. He later moved to Taiwan to re-open the bookstore there. Such stories only fuelled suspicion and distrust of China's legal system.

The demonstrations were also fuelled by a failure to publicly explain the draft bill. Even when the bill was belatedly withdrawn, it was too little, too late. The protests continued to gain steam, became more violent and presented a list of five demands: 1) That the bill be withdrawn (it already had been); 2) that the Chief Executive resign; 3) that the government retract their use of the word 'riots' to describe the protests; 4) that an independent inquiry be conducted into the actions of the police during the protests/riots; and 5) that everyone arrested in the clashes be unconditionally freed.

The demonstrations turned crazy, destroying stores, metro stations, invading the airport and even sacking Legco's premises – spraying graffiti on its interior walls. A subway station was wrecked and had to be closed. Stores were looted and fire hoses used inside shopping centres. Damages to Legco's building cost over 50 million Hong Kong dollars to repair, to the railway around 1.6 billion dollars (about USD 200 million), and to the Polytechnic University, 700 million. In several cases, bystanders who did not support the protests were severely beaten.

Despite the violence, numerous politicians and media in the West happily cheered the demonstrators on. The Speaker of the USA House of Commons, Nancy Pelosi, described violence on the streets of Hong Kong as *'a beautiful sight'*. Julie Eadeh, the US consulate's political unit chief in Hong Kong was photographed meeting with leaders during the 2019 protests, including Joshua Wong, a now 25-year old leader who openly advocates for Hong Kong's independence. He has played a major role in persuading US politicians to pass the Hong Kong Human Rights and Democracy Act. There were numerous allegations of CIA support for the protesters, though without much evidence.

Such behaviour on the part of the West is hard for most Chinese to swallow. How would Americans have reacted if Chinese diplomats had met and supported the leaders of the demonstrations and riots in more than 700 cities and towns in the United States in May/June 2020? I remember that in Canada, in 1970, Prime Minster Pierre Trudeau invoked the War Measures Act to quell violent protests in support of secession. Thousands of soldiers were sent in to restore the peace and 500 arrested in a story that, like Hong Kong's, was the fruit of British and French colonial history.

The New National Security Law

The damage to Hong Kong's economy from the 2019 protests was considerable, and it was compounded by

the economic damage done by the Covid-19 pandemic in 2020. Just as Hong Kong was starting to recover, mid-2020, demonstrators were preparing to resume.

Article 23 of the Basic Law reads: *"The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."*

The new National Security Law for Hong Kong is this same law. The matter became subject to the 'other laws' clause emphasised in Article 18 when Hong Kong's Legislature failed to pass it for 23 years.

Opinion about the new law is so sharply divided that discussion of the details is unlikely to change many people's minds. The law will require Hong Kong to establish a commission of safeguarding national security headed by Hong Kong's leader and managed by Hong Kong's government, but accountable to the central government. The law will protect the presumption of innocence until a suspect is convicted by the judicial organs which in most cases will be decided by Hong Kong juries comprised of ordinary citizens.

Beijing will also establish an office of safeguarding national security in Hong Kong, with the ability to collect and analyse intelligence information concerning national security. The law allows for a small number of cases to be tried by mainland authorities, especially if they involve defence or foreign affairs – including foreign interference – as is made clear in the Basic Law.

With the extreme unrest that paralysed Hong Kong in 2019 and the growing radical ambition of secession, Beijing felt that it had to pass the security law to help prevent a further worsening of instability and insurrection. Macau had already long since passed such a law, which was also required by their Basic Law. Foreign support and encouragement of the unrest in Hong Kong was of special concern in Beijing, making the matter one of national security. No country allows a part of its territory to remain uncovered by national security legislation.

Naturally, many Hong Kongese want a stronger vote but few want a return to the chaos of 2019. Opinion is divided regarding the new National Security Law. Over 2.9 million persons signed a petition in support of the new security law within only a few weeks of its announcement. Nonetheless, opinion polls find that similarly large numbers oppose the law. The Government should expend sufficient energy patiently explaining the law and its safeguards and to answer questions, even difficult ones. Such an

education process would also help residents of Hong Kong understand what is allowed and what is not.

The Tide of History Comes In

In today's tweeting world many media have only a short-term perspective. However, history is of great importance in understanding today's events in Hong Kong. Hong Kong and Macau have been returned to China for over two decades now and the country looks forward to a bright future. A 19 billion-dollar new bridge and tunnel system was recently opened linking Hong Kong to the either side of the Pearl River Delta and ending in Macao. The bridge/tunnel/artificial island system is 55 km long, the *'longest sea crossing on earth'* in both the physical and metaphorical senses.

In 1984, China entered in good faith into an agreement intended to gradually bridge the cultural, social and political gap that had grown between its mainland and its colonized territories, over 150 years, planning a slow 50-year reintegration. However, some countries in the West, including the United States and Great Britain, did not give up the hope that they could once again alienate Hong Kong from China and felt that they were in the right in interfering and encouraging unrest there.

Hong Kongese, especially its youth, are caught in the tide of history, yet reintegration into China remains an amazing opportunity. Hong Kong is one of only

two territories in history (along with Macau), ever to cross what is becoming the world's greatest divide. Hong Kong has gone from being part of the greatest empire in world history to part of the greatest economic rise in world history. It remains an important bridge between China and the world. Few places on earth speak both Chinese and English. Few centres can match Hong Kong's financial services sector. As long as Hong Kong's younger residents do not swim too hard against the current, a great deal of good can come from this inevitable tide.

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