



DOING OUR DUTY

How Britain can help Hong Kong's citizens

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BRIEFING PAPER

EXECUTIVE SUMMARY

- The United Kingdom has a duty under the Sino-British Joint Declaration to uphold the rights of Hong Kong citizens until 2047 as a joint signatory and ex-colonial power.
- While the United Kingdom cannot act within the territory of Hong Kong it can still act to maintain and enhance the rights of Hong Kongers within the territory of the United Kingdom.
- The United Kingdom should offer British National (Overseas) status to all Hong Kongers born before and after the 1997 handover, along with an extension of full residency rights to British National (Overseas) persons equivalent to the status of full British citizens.
- This would follow precedent in the face of extreme violence to ex-colonial citizens as seen in Uganda in the 1960s and 1970s.
- Hong Kong residents, with high levels of education, skills and wages would be a net contributor to the UK economy.
- The Chinese Government would face an increased incentive to act leniently to Hong Kong in order to not lose face should a large number of citizens choose to abandon rule from Beijing.

HOW WE GOT HERE

In 1989 the Adam Smith Institute released a paper entitled *A Home for Enterprise* by Douglas Mason which suggested that—in the face of Hong Kong being returned to the control of the People's Republic of China—an area of the UK should be designated as a potential site for a new settlement with similar rules on tax and regulation as Hong Kong and her current citizens be freely able to move there.

It followed the Sino-British Joint Declaration (Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong) signed in 1984, the Hong Kong Act 1985, and the Hong Kong (British Nationality) Order of the same year.^{1 2}

¹ Constitutional and Mainland Affairs Bureau (PRC), The Joint Declaration, <https://www.cmab.gov.hk/en/issues/jd2.htm>

² UK Government, Hong Kong Act 1985, <http://www.legislation.gov.uk/ukpga/1985/15>

Scotland, as the home of Adam Smith and its long history of liberal economic thought, its record of racial tolerance, and its strong economic growth, was considered a perfect place for settlement along with consideration of sites in Wales and Cumbria. Doing so, Mason suggested, would allow the British government to negotiate stronger terms of democratic accountability in Hong Kong in the lead up to handover—stronger freedoms for the press and private enterprise, and stronger guarantees on personal liberties for Hong Kongers post takeover from Beijing. By giving Hong Kongers the ability to move elsewhere, the Government of the People’s Republic of China would be pushed to provide incentives for them to stay.³

Unsurprisingly nationalists in the UK hated the idea, with the SNP’s spokesman at the time, Chris McLean, saying that it would mean Westminster ‘dumping’ Chinese citizens on an island on the West Coast of Scotland. However at the time the small west coast island of Colonsay, population 114, suggested it could be interested in the idea at least.⁴

The idea didn’t gain traction—nationalist considerations aside in the UK, the set-up from the Joint Declaration was hardwired in and it was thought enough by the British government at the time to implement democratic reforms prior to leaving that Beijing couldn’t then undo post-handover. Hong Kongers born prior to the takeover in 1997 were left solely with the ability to apply and receive designation as a British National (Overseas) (or BN(O)) rather than full rights of citizenship granted to UK nationals in the British Citizen designation.⁵

Individuals BN(O) status are British nationals and Commonwealth citizens, but not British citizens. The rights conferred under this status are heavily restricted when compared to British citizens. People with this status can hold a British passport and can get consular assistance and protection from UK diplomatic posts when travelling overseas (although not in Hong Kong, Macau, or mainland China). The benefits end there though. BN(O)s are subject to immigration controls if they wish to come to the UK and do not have the automatic right to live or work in the UK, and are not considered a UK national by other states in the European Union (EU).

The UK Government gives the following explanation: Anyone who was a British overseas territories citizen by connection with Hong Kong was able to register as a British national (Overseas) before 1 July 1997. British overseas territories citizens from Hong Kong who did not register as British nationals (Overseas) and had no other nationality or citizenship on 30 June 1997 became British overseas citizens on 1 July 1997. Any Hong Konger born after this date, or who has not received this designation already, cannot apply for the status.

³ Pirie, Madsen. Think tank: the story of the Adam Smith Institute. Biteback Publishing, 2012.

⁴ The Herald, “Scotland could be site of new Hong Kong says study”, <https://www.heraldscotland.com/news/11920027.scotland-could-be-site-of-new-hong-kong-says-study/>

⁵ UK Government, “British National (Overseas)”, <https://www.gov.uk/types-of-british-nationality/british-national-overseas>

While the status of BN(O) is not available for new applicants, it could be reopened and expanded, with any rights conferred by the designation expanded simultaneously.

This summer we have seen the result of the decision to offer restricted rights only.

Twenty-two years on from the handover, democracy remains heavily constrained in Hong Kong, Beijing's influence and interference in the everyday governance of Hong Kong is growing, and pro-democracy, anti-Legco, and anti-Beijing protests ballooned after the attempted introduction of extradition from the Special Administrative Region (SAR)—as the Chinese state refers to Hong Kong—to the Chinese mainland.

“GANGREN ZHIGANG” NO MORE

The extradition law, which became the focal point of the protests that began in the summer of 2019, seems to undermine the claim by Beijing that the return of Hong Kong was based on the principle of gangren zhigang (“Hong Kong people ruling Hong Kong”) as coined by the then Chinese Premier Deng Xiaoping when negotiating the Sino-British Joint Declaration.⁶

Warnings were made by academics and legal counsels after the Joint Declaration was signed that the British government had failed to negotiate substantive enforcement provisions within the Joint Declaration should China violate any terms of it. Fears that the Chinese government would seek to withhold democratic reforms put in place by the last Governor Chris Patten and infringe further on civil liberties given time, appear to have been somewhat foresightful.^{7 8}

Chinese belligerence over the role of the Joint Declaration, and any British involvement or oversight in Hong Kong, has gotten worse. In 2014, after the first Umbrella Movement protests that called for the territory to implement “genuine democracy”, China's Foreign Ministry spokeswoman Hua Chunying said that “Britain has no sovereignty over Hong Kong that has returned to China, no authority and no right to oversight”.⁹ This was followed shortly after by the Foreign Affairs Select Committee relaying to the British Parliament that the deputy Chinese ambassador to Britain had said the Joint Declaration “is now void and only covered the period from the signing in 1984 until the handover in 1997”.¹⁰

⁶ Joseph Y. S. Cheng. “Hong Kong: The Pressure to Converge.” *International Affairs* (Royal Institute of International Affairs 1944-) 63, no. 2 (1987): 271-83. doi:10.2307/3025425.

⁷ Chan, Steven L. “Differences Between British and Chinese Views of Law Forebode Uncertainties for Hong Kong's People After the 1997 Transfer.” *UCLA Pac. Basin LJ* 15 (1996): 138.

⁸ Hing, Lo Shiu. “An Analysis of Sino-British Negotiations Over Hong Kong's Political Reform.” *Contemporary Southeast Asia* (1994): 178-209.

⁹ Lee, Francis LF, and Joseph M. Chan. *Media and protest logics in the digital era: The Umbrella Movement in Hong Kong*. Oxford University Press, 2018.

¹⁰ Danny Lee & Gary Cheung, “Beijing tells Britain it has no ‘moral responsibility’ for Hong Kong.” *South China Morning Post*, December, 2014 <https://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless>

This was reiterated in 2017, on the twentieth anniversary of the handover of Hong Kong. The-then British Foreign Secretary, Boris Johnson, congratulated Hong Kong on its success and said this was from the “high degree of autonomy, as enshrined in the Sino-British Joint Declaration and Basic Law (Hong Kong’s Constitution), centred on key freedoms, strong rule of law, and an independent judiciary.”¹¹ In response, China’s foreign ministry spokesman Lu Kang said the legally binding Hong Kong handover treaty with Britain was to be treated “as a historical document” which “no longer has any practical significance,” and that “it is not at all binding for the central government’s management over Hong Kong. The UK has no sovereignty, no power to rule and no power to supervise Hong Kong after the handover.”¹²

The British Government did not and do not agree. The Foreign Office rebuked the remarks saying that “the Sino-British Joint Declaration remains as valid today as it did when it was signed over 30 years ago,” and that the Joint Declaration “is a legally binding treaty, registered with the U.N. and continues to be in force. As a co-signatory, the UK government is committed to monitoring its implementation closely.”¹³

With Boris Johnson now Prime Minister and protests over Beijing interference now ongoing for over two months, there is little scope for a practical climbdown in position — yet also clearly no action that has been taken to enforce the British position, and limited resource to do so.

PROTESTS, RESPONSE, AND THE NECESSITY OF ACTION

A crackdown by domestic police forces and even from the growing military build-up in nearby Shenzhen seems more and more likely as the actions of protestors become more disruptive to the everyday running of the city.¹⁴

The Extradition Bill first saw protests in March 2019 with 12,000 demonstrating against the proposed law.¹⁵ They became entangled in anti-government sentiment on June 4th, the 30th anniversary of the 1989 Tiananmen Square protests. The subsequent weekends saw huge marches with estimates as high as two million

11 Foreign & Commonwealth Office (UK Government), Hong Kong Special Administrative Region 20th anniversary: written ministerial statement, 29 June 2017 <https://www.gov.uk/government/speeches/hong-kong-special-administrative-region-20th-anniversary-written-ministerial-statement>

12 Reuters, “China says Sino-British Joint Declaration on Hong Kong no longer has meaning”, June 2017, <https://www.reuters.com/article/us-hongkong-anniversary-china-idUSKBN19L1J1>

13 *ibid.*

14 Business Insider, “Videos show a massive procession of Chinese military vehicles gathering along the Hong Kong border as China mulls over its next move in response to protests”, August 2019, <https://www.businessinsider.com/videos-chinese-military-vehicles-gather-in-shenzhen-hong-kong-protests-2019-8?r=US&IR=T>

15 Hong Kong Free Press, “12,000 Hongkongers march in protest against ‘evil’ China extradition law, organisers say”, March 2019 <https://www.hongkongfp.com/2019/03/31/pictures-12000-hongkongers-march-protest-evil-china-extradition-law-organisers-say/>

marchers on the streets on June 16th.¹⁶ Half a million joined an annual pro-democracy demonstration on the anniversary of Hong Kong's handover on July 1st which led to the storming of the Legislative Council of the Hong Kong.¹⁷

China's response had, until recently, been to watch from afar, originally ignoring protests and pushing on with the Extradition Bill, but was forced into accepting Hong Kong's executive suspending the passage of the Bill. Beijing has not been willing to let protestors demands be further met, however, with the Chinese Government reportedly refusing to accept the resignation of Hong Kong's embattled Chief Executive Carrie Lam.¹⁸

Following two weekends of militia and criminal violence against protestors, and increasingly disruptive protest actions, the Chinese Government has started issuing more interventionist rhetoric.¹⁹

Beijing's Hong Kong and Macao Affairs Office issued a statement on the 12th August reported by the Associated Press as saying that the situation in Hong Kong was "beginning to show the sprouts of terrorism" and constituted an "existential threat" to the population of Hong Kong, while also saying that the Hong Kong government "must take resolute action toward this violent criminality, showing no leniency or mercy."²⁰

The police have been showing less leniency. In the most recent round of protests, Hong Kong's police were alleged by pro-democracy activists to have fired tear gas canisters indoors, shot bean bag pellets into a woman's eye causing blindness, shot gas pellets within a metre distance of protestors, and have ignored vigilante groups²¹.

With the darker language eminenting from officials in China, and violent responses increasing from Hong Kong's domestic police force, a liberal response becomes more necessary. The UK is most appropriate to do so given the historical relation-

16 SCMP Reporters, "As it happened: A historic day in Hong Kong concludes peacefully as organisers claim almost 2 million people came out in protest against the fugitive bill", South China Morning Post, June 2019

<https://www.scmp.com/news/hong-kong/politics/article/3014695/sea-black-hong-kong-will-march-against-suspended>

17 Hong Kong Free Press, "Hong Kong protesters occupy legislative chamber after smashing windows, vandalising corridors", July 2019

<https://www.hongkongfp.com/2019/07/01/breaking-hong-kong-protesters-storm-legislature-breaking-glass-doors-prying-gates-open/>

18 Henny Sender, Sue-Lin Wong, Nicolle Liu, "Hong Kong chief Carrie Lam offered to step down over protests", Financial Times, July 2019

<https://www.ft.com/content/e646dbba-a3e4-11e9-974c-ad1c6ab5efd1>

19 Helier Cheung & Christopher Giles, "Hong Kong protests: Were triads involved in the attacks?", BBC, July 2019 <https://www.bbc.co.uk/news/world-asia-china-49071502>

20 Yanan Wang & Christopher Bodeen, "Hong Kong airport shuts down amid pro-democracy protest", AP, August 2018

<https://www.apnews.com/1131c0f97db34e1293862ca7fa8d4f06>

21 Joshua Wong, Twitter post, August 2019, 1:35 PM

<https://twitter.com/joshuawongcf/status/1160892506550071297>

ship, and the responsibility the government has under the Joint Declaration — even if disputed by the People’s Republic of China.

OPTIONS AVAILABLE

The limited scope of actions that Britain can pursue under the Joint Declaration, the distance between Hong Kong and Britain, and the ability and willingness of China to put geopolitical and commercial pressures on those pushing against their actions in Hong Kong and elsewhere means options are few.

While the British government cannot enforce the Joint Declaration and the rights of Hong Kongers in Hong Kong itself, it can allow Hong Kongers to come to it..

The original suggestion from the Adam Smith Institute – to allow Hong Kongers born before 1989 and their dependents to claim full British Citizenship – would fit within a practical, liberal, and economically sound framework.

Beijing cannot easily afford in one of its most globally connected cities to act with full-throated violence, and losing Hong Kongers seeking liberty to the old colonial power would undermine the recent modernisation efforts the country has projected overseas. With Taiwan also under pressure from Beijing, but with greater independence and the ability to walk away from unification, a violent end to the protests would throw away decades of diplomacy by Beijing.

The United Kingdom, by granting Hong Kongers (born both before and after the handover in 1997) the unilateral right to move to, live, study, and work in Britain we would be increasing the incentive for China to act peaceably and not convince them to stay with a more liberal approach.

This would mean either granting asylum without restriction on work and residency for Hong Kongers fleeing the regime, or, more liberally, it could mean extending the designation of British National (Overseas) to all current residents of Hong Kong, with an extension of the rights of that designation to be equivalent to that of British Citizens as defined under the British Nationality Act 1981.²²

The other option is a revisit of the one the Adam Smith Institute proposed in 1989. Building on the recent announcement of Free Ports in the United Kingdom post-Brexit, the government could allow for a substantial area for Hong Kongers to resettle in a low-tax, low-regulation areas outwith UK customs territory with suspended planning laws allowing for quick development as people re-settle.²³ This area could allow for a full continuation of Hong Kongers’ individual rights that

²² UK Government, British Nationality Act 1981, <http://www.legislation.gov.uk/ukpga/1981/61/contents>

²³ UK Government, “Trade Secretary announces Freeports Advisory Panel will ensure UK is ready to trade post-Brexit” <https://www.gov.uk/government/news/trade-secretary-announces-freeports-advisory-panel-will-ensure-uk-is-ready-to-trade-post-brexit>

Britain has guaranteed under the Sino-British Joint Declaration as well as a corresponding territory.

Ultimately the question of expanding this right splits those that care solely about geography from those that care about humanity. Hong Kongers moving to the United Kingdom, in search of a better life, would be able to live their lives in freedom. China would lose a generation and Britain win a moral and material victory.

The territory itself may lose a number of civil rights if the Chinese Communist Party's response to the protests is pushed into violence and crackdown, but the ideals that the protestors seek would be free for them here — and their ingenuity, and their productivity, and their labour should be welcomed here by businesses and communities alike.

PRECEDENT

There is precedent in Britain for the large-scale welcome of those from ex-colonial territories being received in the UK, settling and assimilating. In the late 1960s and throughout the 1970s the Ugandan dictator Idi Amin and the Kenyan government expelled between 150,000 and 200,000 British passport holders of South Asian heritage from their countries. They've been an overwhelmingly successful group in the UK, overrepresented in higher skilled professions and managerial posts.²⁴ With high levels of education, strong English language skills and entrepreneurial history, this group matches a large number of skill sets we could expect of migration by Hong Kongers if allowed, tied with a UK experiencing far less racial tension between migrant groups and the existing population than East Asians experienced in the twentieth century.²⁵

Ugandan East Asians are prominent in modern Britain in commerce, academia, and politics. The new Home Secretary Priti Patel is the daughter of two Ugandan Asians. Lord Popat and Shailesh Vara MP were both born in Uganda. The principled stand by the government at the time to help those in need to resettle and establish themselves here in the United Kingdom has led directly to tens of thousands of new lives lived in liberty.

DUMPING THE LUMP OF LABOUR FALLACY

The lump of labour fallacy holds that adding a large number of workers will necessarily mean a decrease in wages for existing workers. It has been disproven on countless occasions in the twentieth and twenty-first centuries, including and especially in Western countries.²⁶ The most famous example of which, the Mariel

²⁴ Anders, Jake, Simon M. Burgess, and Jonathan Portes. "The long-term outcomes of refugees: tracking the progress of the East African Asians." (2018).

²⁵ Taylor, Becky. "Good Citizens? Ugandan Asians, Volunteers and 'Race' Relations in 1970s Britain." In *History Workshop Journal*, vol. 85, pp. 120-141. Narnia, 2018.

²⁶ Krugman, P. "Lumps of Labor", *New York Times*, October 2003,

Boatlift migration of Cubans to Miami in the United States, saw Card (1990) show that the “the Mariel immigration had essentially no effect on wages or employment outcomes of non-Cuban workers” despite raising the labour supply in the city by 7% in an extremely short period of time.^{27 28}

The impact of refugee and high-skilled migration into the UK has not been one of reduced wages. As Madeline Zavodny and Pia Orrenius wrote for the Adam Smith Institute last year in their paper, *Prices Not Points*, the UK differs from many other countries with regard to immigration in at least two notable ways: immigrants are relatively well educated and they are relatively likely to be working. Labour market research also suggests that the overall labour market impact of immigration on the existing population of the UK has been negligible, and short-run fiscal estimates for the country have been positive.^{29 30}

This would be no different with Hong Kongers. Workers in the SAR are currently able to command an average of 19,499.97 HKD per month in wages after tax (around £1,786.72, compared to the UK’s average post tax income of £1,730) and have a high rate of degree and technical education.^{31 32} The value add of migrants from the territory to the UK economy could be substantial rather than acting as a deflationary pressure on existing workers’ wages or a drain on the public finances.

CONCLUSION: A HOME FOR HONG KONGERS

After Chris Patten left Hong Kong as the last British Governor of the territory, he argued that Hong Kong was free and successful because of the liberties afforded to the people and agreed to by both China and the United Kingdom. Writing of his experiences, he said:

Nevertheless, it is true that on 1 July 1997 Hong Kong became the only example of decolonization deliberately accompanied by less democracy and a weaker protection of civil liberties. This was a cause for profound regret, especially for the departing colonial power. But it was China’s doing and China’s decision. I am pleased that Britain narrowly avoided complicity in the dishonourable act of denying the citizens of free Hong Kong what they had been promised in 1984.³³

²⁷ Card, David. “The impact of the Mariel boatlift on the Miami labor market.” *ILR Review* 43, no. 2 (1990): 245-257.

²⁸ Clemens, Michael A., and Jennifer Hunt. “The labor market effects of refugee waves: reconciling conflicting results.” *ILR Review* 72, no. 4 (2019): 818-857.

²⁹ Orrenius, P. and Zavodny, M. “Prices not points: a post-Brexit immigration solution”, Adam Smith Institute, March 2018

³⁰ The Migration Observatory at the University of Oxford, “The Fiscal Impact of Immigration in the UK”, <https://migrationobservatory.ox.ac.uk/resources/briefings/the-fiscal-impact-of-immigration-in-the-uk/>

³¹ Numbeo, “Cost of Living in Hong Kong”, <https://www.numbeo.com/cost-of-living/in/Hong-Kong>

³² Education Bureau of the Government of Hong Kong, “Distribution of Educational Attainment of Population Aged 15 and Over”, <https://www.edb.gov.hk/en/about-edb/publications-stat/figures/educational-attainment.html>

³³ Patten, Christopher. *East and West: The last governor of Hong Kong on power, freedom and the future*. Pan Macmillan, 1999.

The United Kingdom has a duty under the obligations of the Sino-British Joint Declaration to uphold the rights and civil liberties of Hong Kongers until the end of the 2047 transition period, and a moral responsibility to the people of Hong Kong who, because of Britain's failure to negotiate safeguards during the handover, are now threatened with violent response from domestic police and a growing military presence on mainland China.

With little scope to act in the territory itself, and the risk of spillover into worse violence, Britain's best hope of a liberal solution to the current crisis is to offer Hong Kongers a new set of rights within the territory of the United Kingdom. This way, the government would continue to act to meet its obligations under the Sino-British Joint Declaration, and help give those fearing violent retribution or arrest and extradition in future to mainland China the freedom to pursue a new life.

Extension of rights afforded would send a marked signal that we have not forgotten our role or abandoned our principles. Britain should send a message that the torch of liberty is still lit.