

*Commentary*

**Civil Liberties Eroding in the Aftermath of  
Hong Kong's Socio-political Unrest (2019-20):  
A Discussion on the City's  
Financial (Un)Sustainability**

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**Abstract**

In this article, the author will discuss how the presence of civil liberties and autonomy in Hong Kong, compared to mainland China, is a distinct feature of the territory that has driven Hong Kong's economic success in recent decades. The article will then explore how the implementation of the National Security Law (NSL) is an encroachment upon Hong Kong's civil liberties and democracy. Next, it will assess whether Hong Kong, losing such values, is still economically sustainable, especially when Hong Kong is increasingly facing competitions with neighbouring regions, such as Taiwan and Singapore.

**Keywords:** *civil liberties, autonomy, democracy, financial sustainability, Hong Kong, China, National Security Law*

## 1. Introduction

Geographically, Hong Kong and mainland China are separated by the Frontier Closed Area – a border zone area in Hong Kong that the city’s Lo Wu Immigration Control Point is situated. The two lands separated by the Frontier Closed Area had undergone different trajectories since the mid-19th century, with Hong Kong being colonised by the UK and mainland China becoming a communist country in 1949. Although the former British colony was returned to its motherland in July 1997, the 1984’s *Sino-British Joint Declaration* signed by former British Prime Minister Margaret Thatcher and then Chinese premier Zhao Ziyang indicates that the prosperous Pearl of the Orient would be given some degree of political, social, legal and otherwise autonomy by China at least until the end of June 2047.

### 1.1. China

Persistently, “[t]he Chinese Communist Party has been making use of “sharp power” – penetrating the political and information environments in Western democracies to manipulate debate and suppress dissenters living both inside and outside China – in order to strengthen its domestic position,” writes Associate Professor Andreas Fulda from the University of Nottingham in his book entitled *The struggle for democracy in Mainland China, Taiwan and Hong Kong*. In China, the government would muzzle dissenters and critics by making them disappear, put their families under house arrest based on ungrounded charges, threaten to kill their families and forbid them to flee away from China. Among all the political victims, Chinese government’s persecution against Wang Quanzhang, a human rights lawyer who defended Chinese political activists, and Liu Xiaobo, a Nobel Peace Prize-awarded human rights activist, were among the few incidents that sparked the most

international attention. Here Wang was arrested in August 2015 and made disappear since then. Liu was imprisoned from December 2009 for “inciting subversion” with his protests (Ma, 2018). Capitalising on law enforcement to impede any incidents of subversion by, for example, arresting rioters, if any, may ostensibly be seen as a sound approach to maintain a stable, appealing environment for domestic and foreign investment, business operation and alternative corporate, financial activities.

However, dissenters and rioters represent distinct features. Dissenters simply refer to the cohorts which differ in opinion from the majority due to, for example, their different moral values and socioeconomic characteristics. Rioters, however, imply individuals applying violent disturbance, jeopardising the peace of a given space. When the rulers of a given space cannot accept individuals making any dissent, they offer little confidence for, foreign or not, investors to deliver business or otherwise projects as investors themselves, under such a circumstance, will always be forced to comply with the expectations and interests of the rulers. Otherwise, any disobedience from the investors can result in arbitrary arrest, assault and blackmail. The investment, corporate environment, as such, terrifies investors and businessmen to a large extent.

Alternatively, rioters are notoriously known as those employing violence to disturb the peace of a given space, increasing residents’ fear of crime and dropping their sense of security. Proper, evidence-oriented arrest and prosecution against rioters would therefore be seen as a necessary law enforcement means to stabilise the space for the sake of maintaining a trustworthy business, corporate and social environment. Supporting evidence includes the fact that, civil unrest in the US, such as the Black Lives Matter (BLM) civil disobedience, has disincentivised small business operations, depressed local property prices and

discouraged economic activities (Garver, 2020; *Forbes*, 22nd December 2010). Law enforcement agencies therefore used pepper balls and smoke canisters to clear spaces with riots as a needed approach to recover local economies.

## **1.2. Hong Kong**

Compared with mainland China, residents and citizens of Hong Kong, now known as a special administrative region of China, traditionally were entitled to substantial civil liberties, an independent legal system and some extent of democratic rights (e.g. freedom of speech and freedom of assembly) under the city's own mini-constitution – the *Basic Law*. However, in recent years, mainland Chinese authorities bypassed Hong Kong law enforcement system and kidnapped and smuggled Hong Kong bookstore owners, who sold books criticising the Chinese Communist Party (CCP), back to the mainland for political investigation between October and December of 2015. Pro-Beijing Hong Kong lawmakers denounced the subject of Liberal Studies – a core subject in the Hong Kong Diploma of Secondary Education (HKDSE) curriculum – as a political instrument that purportedly propelled civil disobedience and supported the Education Bureau's "voluntary" vetting scheme which engendered local publishers to delete political sensitive content against the CCP in their textbooks in August 2020. These incidents all demonstrate that, like the mainland, Hong Kong citizens' civil liberties have been stripped off, an independent legal system has been voided and any presence of democratic-minded expression has been politically repressed.

In Hong Kong, law enforcement was deployed to combat the mass-scale riots. However, peaceful demonstrations were seen citywide when the extradition bill was first proposed. Not until police brutality was witnessed and reported that peaceful demonstrations began to turn into

riots. Therefore, police brutality and violence should not be justified as a means to confront civil unrest, as the presence of police brutality *per se* was one of the, if not the only, vehicles for the development of rioting citywide. Pro-Beijing camps' claim that the use of "necessary" police violence to combat civil unrest was needed to reassure local and foreign businesses that Hong Kong has always been one of the most reliable cities for business-related activities was misleading. Without police brutality, mass demonstrations might not turn into civil unrest, a circumstance that triggered the development of an unfavourable business environment for investors.

## **2. Aims**

In this article, the author will discuss how the presence of civil liberties and autonomy in Hong Kong is a distinct feature of the territory that has driven Hong Kong's economic success in recent decades. The article will then explore how the implementation of the NSL is an encroachment upon Hong Kong's civil liberties and democracy. Next, it will assess whether Hong Kong, losing such values, is still economically sustainable.

## **3. Why Civil Liberties and Autonomy Are the Cornerstone of Hong Kong's Economic Success and How the NSL Jeopardises Hong Kong's Civil Liberties**

### **3.1. Freedom**

Civil liberties that Hong Kong citizens were entitled to included freedom of press, freedom of expression, freedom of assembly, freedom of speech and the right to equal treatment under the law. In recent years, especially after the outbreak of civil unrest in 2019, however, civil

liberties within the city have significantly been eroding. Such a claim is backed by evidence, including the World Press Freedom Index. Hong Kong ranked 34th in 2010, 70th in 2015 and only 80th in 2020 in such an Index (Reporters Without Borders, 2010, 2015, 2020). The Human Freedom Index is a more comprehensive ranking that, in part, measures regions' freedom of expression and assembly and the rule of law; and where Hong Kong reached 3rd in 2020. However, it is noteworthy that the 2020 Human Freedom Index ranking was analysed based on data collected in 2018, which was prior to the CCP's unprecedented interventions in the territory from 2019 onwards. Therefore, such a holistic ranking fails to indicate the most up-to-date denial of entitling civil liberties to Hong Kong citizens, particularly after the implementation of the NSL. That being said, however, the Index highlights that the city enjoyed a high degree of civil liberties in the pre-civil unrest epoch.

Freedom of speech and expression represents individuals' ability to speak and also to listen to others and allow other individuals or cohorts to voice their opinion. To ensure that corporations from different countries are willing to establish their Asian bases in Hong Kong, it is crucial to establish an inclusive environment where corporations can express freely as per their interests, especially when a collective international business environment inevitably encompasses ample conflicts of interest. Hong Kong's regression in freedom of press in the past decade hints that local businesses have been encountering more barriers to the free flow of, and timely access to, information. Businessmen's decision-making will likely delay to a somewhat inefficient fashion. Local talents are also considering emigration under the climate of socio-political divide in Hong Kong, especially when many local young professionals are still democratic-minded, despite the implementation of the NSL.

### **3.2. Competitions**

Comparatively, with minimal Beijing's political restriction and interference in neighbouring regions, including Taiwan and Singapore, Hong Kong's values as an international financial hub have been depreciating. For example, after the implementation of the NSL in Hong Kong, Google decided to establish an Asia's data centre in Taiwan, in lieu of Hong Kong, on 3rd September 2020 (*Taiwan News*, 3rd September 2020). The Pacific Light Cable Network (PLCN), an underwater data cable construction project, in part owned by Facebook and Google, decided to deny their initial plan of building a submarine communications cable that connects Los Angeles of the US and Hong Kong due to security concerns (*ZD Net*, 1st September 2020). These incidents indicate that leading multinational corporations (MNCs) have been dropping their plans to establish significant business collaborations between Western powers and Hong Kong, as such powers are able to find better, less politically intervened alternatives in Asia to form partnerships. Hong Kong's business competitiveness has therefore been persistently threatened, or surpassed, by Taiwan, Singapore and perhaps more.

### **3.3. The Rule of Law**

It is noteworthy that Hong Kong's common law system, inherited from the UK, remains more reliable and pragmatic than Taiwan's and mainland China's civil law system, as Hong Kong judges are given the right to form case laws – legal decisions can be determined by rulings on legal precedents. In Taiwan, under a civil law jurisdiction, although legal decisions can still be made by reference to judicial interpretation of precedents, the extent of reliance on case law is relatively less than common law jurisdictions (Chang and Chao, 2004). Common law

countries are inclined to be more responsive to inventor's interests and Hong Kong's common law system is more familiar to leading Western investors. Any conflicts or issues occurred in the financial market can be handled legally in a more efficient manner (Yeung and Huang, 2020). As such, Hong Kong, relative to the mainland, remains having a highly favorable jurisdiction that supports transparent, efficient business activities. Data backing up such a claim includes the outcomes of the World Justice Project (WJP) Rule of Law Index 2020. The Index measures the degree of the rule of law practiced by 128 countries and jurisdictions in the fields of, for example, absence of corruption, constraints on government powers and openness of the government. Here Hong Kong, Singapore and China ranked 16th, 12th and 88th respectively (note: Taiwan was excluded from the study) (The World Justice Project, 2020). The Index reflects that each of Hong Kong and Singapore preserves a highly sound legal system that welcomes international investors to develop business projects in the host Asian region. When China fails to maintain a transparent, open and reliable legal system, Hong Kong and Singapore continue to serve as better alternatives for business development in Asia and as gateways to carrying out businesses with China. However, with a heightened degree of Beijing's interference against Hong Kong dissents, the erosion of the rule of law in Hong Kong shall compound. HSBC bank accounts of Ted Hui, former Hong Kong legislator who was self-exiled to Europe to flee from CCP's political persecution, were frozen in December 2020. HSBC representatives informed that the bank received a police notification to legally freeze his accounts (*The Guardian*, 7th December 2020). More similar politicised legal actions will plausibly be taken as local police have been endeavouring to arrest active members of the pro-democracy camp in the city and more Hong Kong dissenters self-exiling and seeking political asylum overseas shall be expected. If Beijing continues



to politically interfere in Hong Kong's judicial independence, the rule of law of the territory will be rotten. By then, international investors will seek Asia's alternatives with more transparent, open and reliable jurisdictions, such as Singapore, to run their businesses.

#### **4. Conclusions**

Under the implementation of the NSL, professionals from many sectors, including the corporate, media and education sectors, are still learning to adapt to the new political, legal settings in Hong Kong. With the uncertainty, it is reasonable for businesses and citizens to cast doubt on Hong Kong's financial sustainability. The NSL is explicitly an institutional barrier to the maximisation of civil liberties in Hong Kong. Such a barrier shall discourage Hong Kong from offering as many favourable terms for international investors to undertake business activities in the city as in the pre-civil unrest epoch. However, such a legislation can, alternatively, bar individuals from attempting to paralyse Hong Kong economy again, like what happened during the Umbrella Movement in 2014. Either an unduly restricted or unrestricted economy is not sustainable. It is essential for Beijing to occupy the middle ground and maintain a reasonable level of political restrictions on Hong Kong's economic, legal activities. Hong Kong still enjoys a far higher degree of civil liberties than the mainland. Even if Beijing will continue using the NSL as an instrument to arrest dissenters, it is crucial for the Chinese government to limit their use of the legislation to arresting and prosecuting political oppositions who incite subversion rather than arbitrarily sanctioning anyone with different political, economic and social interests or views. In doing so, Beijing can assure that Hong Kong is still a favourable economy for international business, trade and investment.

## Note

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