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„Diplomatic Triumph or Poisoned Chalice: The 1984 Joint Declaration and Hong Kong's Prospects for Democracy"

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*On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.*

## Abstract

The Hong Kong Special Administrative Region saw in 2019 the fiercest and longest protests since its handover back to China in 1997. The background was a perception that the Hong Kong government, which is more accountable to Beijing than its own citizens, was trying to clamp down on the civil liberties, which the territory enjoys since its time as a British colony. Calls for upholding the autonomy of Hong Kong, laid down in the city's Basic Law, and the demand for universal suffrage – also promised by said law – where eventually crushed in 2020 with the implementation of *The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.*

When zooming out to survey the larger picture, one has to inevitably ask oneself why the people of Hong Kong clamour for universal suffrage and a democratic reform of their political system. Upon the realisation that such was stipulated in the city's quasi-constitution, the Basic Law, the next question must be why these promises have not been realized so far.

The aim of this thesis is to look at exactly this question and even further beyond. The democratisation of Hong Kong mirrors a many-sided prism, where facets such as economy, the city's judiciary and its history play a role among many others. This thesis takes a mainly historical approach with a look at the legacy of Hong Kong's former colonial ruler, Britain, and spanning all the way to modern day developments. The effort is to show, how today's unfolding events have been influenced by the actions and missed opportunities of the past, and to deduct what future the most recent developments hold. Other main actors identified within the scope of this analysis are therefore the Hong Kong identity – sharing certain similarities with the rest of China on the one hand, yet totally unique on the other; the attitude of the Chinese Communist Party towards Hong Kong – a consistent presence in Hong Kong's affairs since colonial times; and the role of the Hong Kong elite – a business community which had always played a part in the city's political development. The interactions between these three have led to many hitherto unexpected results, however certain historical parallels become visible at a closer inspection.

Diese Masterarbeit hat zum Ziel, die Demokratiebewegung in Hong Kong aus einer sozial-historischen Perspektive darzustellen sowie ihre Hintergründe herauszuarbeiten, um ihren Verlauf letztendlich verstehen zu können. Dabei wird sowohl auf die Bedeutung der britischen Kolonialzeit und dessen Erbes eingegangen, sowie auf die neuesten demokratischen Entwicklungen seit der Rückgabe Hong Kongs an China nach 1997. Der Identität der Hongkonger, Pekings Haltung zur Demokratisierung der Sonderverwaltungszone sowie der Rolle von Hong Kongs Wirtschaftselite auf diese Entwicklungen wird ein besonderes Augenmerk gewidmet. Letztendlich soll der Werdegang, der zu den massiven Unruhen in den Jahren 2019/2020 geführt hat, erklärt werden und eine Aussicht auf die Zukunft der Demokratisierung Hong Kongs gegeben werden.

# Contents

# List of Abbreviations

| | |
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| CE | Chief Executive |
| ExCo | Executive Council |
| FC | Functional Constituencies |
| GC | Geographical Constituencies |
| HKMAO | Hong Kong and Macao Affairs Office |
| HKSAR | Hong Kong Special Administrative Region |
| LegCo | Legislative Council |
| NPC | National People's Congress |
| NPCSC | National People's Congress Standing Committee |
| PRC | People's Republic of China |
| SAR | Special Administrative Region |

# I. Introduction

Early in January 2020, the South China Morning Post published Alex Lo's column *Will 'one country, two systems' survive after 2047?'*.[1] Despite having experienced over ten months of turmoil with the Water Revolution, a positive mood is discernible in the article, even talking about the prospects for continuing with the current 'one country, two systems' framework past the 2047 deadline, when the 50 years of relative autonomy granted to Hong Kong by China after the reversion from the British expire.

Only six months later the situation had changed drastically with the implementation of China's National Security law on 1 July 2020, restricting Hong Kong's civil liberties on a scale not witnessed before. Not only was the 2047 'second handover' postponed, but it seemed as if it had been pulled even closer. Amidst the uncertainty about the future political landscape of Hong Kong after the impact of the new law, parallels to the first handover in 1997 emerge. While both times were marked by uncertainty, economic worries prompted the British to tackle the question 18 years ahead of its time, with the aim to reduce anxiety and create stability. In 2020 – 27 years before Hong Kong's governing principle expires – large political turmoil wracks the city. With this parallel, a paradox becomes visible as well: whereas the Chinese Communist Party in Beijing claims to enact reforms in Hong Kong to create stability and prosperity, this only leads to further and larger protests. The second largest protests Hong Kong had witnessed have taken place only six years ago in 2014. Hong Kong's citizen seem to are now constantly fighting off attempts of Beijing to encroach upon their civil freedoms, while at the same time standing up for themselves, calling for the implementation of universal suffrage and democratic reform.

When zooming out to survey the larger picture, one has to inevitably ask oneself why the people of Hong Kong clamour for universal suffrage and a democratic reform of their political system. Upon the realisation that such was stipulated in the city's quasi-constitution, the Basic Law, and is enforced through its hybrid system of liberal authoritarianism[2], the next question must be: why haven't these promises been realized so far?

[1] Alex Lo, 'Will 'one country, two systems' survive after 2047?', *South China Morning Post*, 23 January 2020. https://www.scmp.com/comment/opinion/article/3047449/will-one-country-two-systems-survive-after-2047

[2] For a definition of liberal authoritarianism, see page 30.

The aim of this thesis is to investigate the legacy of the former colonial ruler, Great Britain, on the democratisation of Hong Kong and the effects still visible today. Inspired by the following passage in C.H. Bush's book *Hong Kong in the Shadow of China, Living with the Leviathan*,

> Furthermore, the growing number of protests have made anachronistic the principle in the Basic Law concerning the pace and scope of political reform: that it should occur "in light of the actual situation in the Hong Kong SAR and in accordance with the principle of gradual and orderly progress." More civil disobedience meant that if political change was gradual, it would not be orderly. Conversely, preserving order would require more rapid reform.[3]

the assumption arose, that it is in the interest of China to delay democratic reform and the implementation of universal suffrage as long as possible. Understandably, the younger generations of Hong Kong, having grown up accustomed to their civil liberties look with trepidation towards the 2047 deadline. So far, the increasingly occurring pro-democracy protests in Hong Kong seem to indicate, that the politically interested population is unsatisfied with the progress of political reforms. Until now, regardless of civil disobedience, and whether the 'actual situation in Hong Kong' was ripe or not, Beijing has postponed said political reforms.

To better understand the matter at hand, this thesis commences by first exploring Hong Kong's history since its occupation in 1842. A brief overview over the city's existence under the British administration and its raison d'être is given in a first chapter.

The second chapter focuses on the political development, unveiling the conception and establishment of the current political hybrid-system. It is divided in four parts: the first one covers the negotiations leading to the Sino-British Joint Declaration in 1984, which laid out the foundation of Hong Kong's present-day political system. This is followed by the second part, where the Basic Law, its five-year drafting process, and the events unfolding around it will be scrutinized. Thirdly, the governorship of Chris Patten from 1992 to 1997 will be examined with a focus on his proposals for electoral reform, as well as their effect of the Chinese attitude towards Hong Kong. Lastly, the democratic development and reforms after the handover in 1997 will unveil, how well Beijing has stuck to its

[3] Richard C. Bush, *Hong Kong in the Shadow of China: Living with the Leviathan* (Washington, D.C: Brookings Institution Press, 2016), 94.

commitment to introduce universal suffrage to Hong Kong, which is something it has pledged to do in the Basic Law itself.

Chapter three of this thesis consists of an analysis of the previous chapters, from three perspectives deemed important to the process of democratisation.[4] First of all is the Hong Kong identity, which has been shaped by this very process. Second comes the Chinese Communist Party's attitude towards Hong Kong and the city's insistence on civil liberties. While some might portray Beijing as the antagonist in this scenario, the third lens, Hong Kong's elite has its own part to play. It has to be noted here, that due to the complexity of the topic, many more points of analysis could have been employed, such as the role of the United States and its 1992 US-Hong Kong Policy Act; the link between Hong Kong's economy and the protest; or the importance of an independent judiciary. However, it has been deemed, that the three aspects chosen within this framework are most indicative.[5]

Finally, the findings from both the historical chapter, as well as the analysis will be combined in the conclusion, to determine the legacy of the British and the state of political reforms in Hong Kong. Although Hong Kong might play a diminished role in China's growth nowadays, it remains nevertheless an important city, both for the mainland as well as for the international community. As a financial and commercial centre, its differing political and judicial system serve as a guarantee for international investments, as well as Chinese entrepreneurs. Any upheavals causing civic unrest will influence the economic aspect and importance of Hong Kong. Through answering the question of Hong Kong's missing political reform, with the developments outlined in thesis, a tentative forecast for the region's future can be made.

# II. History of Hong Kong

No work about Hong Kong would be regarded as complete without at least an outline of its history. The fascinating transformation from "a barren island with hardly a house

[4] Democracy is defined in this thesis within the scopes of the Hong Kong protesters demands: The existence of civil liberties, accompanied by universal suffrage; the right to stand for and participate in election; for said elections to be free, competitive and to return a representative, liberally elected government; the ability to vote out ones representatives; and to have a government accountable towards its citizens, free from external influence.

[5] For the link between Hong Kong's economy and social unrests, see for example Bush, *Hong Kong in the Shadow of China. Living with the Leviathan.* For an in-depth view on the role of the judiciary in Hong Kong, see Gittings, *Introduction to the Hong Kong Basic Law*.

upon it"[6] on the fringes of the Qing dynasty's empire into a financial hub and a metropolis of seven million under British administration has been adequately dealt with in numerous iterations.[7] The aim of this chapter is to present a brief overview of the territory's history and highlight the events which led to its present-day political system, which will be then further analysed.

Hong Kong was a part of China until its occupation by the British during the First Opium War (1839-1842) on 26 January 1841.[8] The desire for an economic foothold for better access to the Chinese market, and the unwillingness of the Qing dynasty government to grant this were the triggers for the war. Although initially a different island off the coast of China was singled out for British occupation, Chief Superintendent of Trade Charles Elliot opted for the island of Hong Kong instead.[9] The argument prevailed that its natural harbour, which had proven itself as a valuable base of operation for British trading activity previous to the outbreak of the war, was more easily defensible.[10] After the continued display of British naval and military superiority, the Chinese conceded to negotiate for peace, acceding to the Treaty of Nanjing. With its signing on 29 August 1842, Hong Kong was ceded to the British in perpetuity.[11]

During the Second Opium War (1856-1860), To further extend its trading base in China, the British Empire took over the Kowloon Peninsula and Stonecutters Island during the Second Opium War (1856-1860). Initially leased for 500 silver dollars per annum, the Treaty of Tianjin in 1858 and its ratification during the Convention of Peking in 1860 converted the lease into a permanent cession under the latter's Article VI.[12] Finally, the rest of

[6] Steve Yui-Sang Tsang, *A Modern History of Hong Kong* (London ; New York: I.B. Tauris, 2004), 14.
[7] See for example Steve Tsang, *A Modern History of Hong Kong*; John Mark Carroll, *A Concise History of Hong Kong*; or Frank Welsh, *A Borrowed Place: The History of Hong Kong*.
[8] Tsang, *A Modern History of Hong Kong*, 11.
[9] Lord Palmerston, Britain's Foreign Secretary, gave instructions to occupy one of the numerous Zhoushan islands, located further north along the Chinese coast, closer to Shanghai.
[10] Hosea Ballou Morse, *The International Relations of the Chinese Empire* (New York : Paragon Book Gallery, 1900), 650, http://archive.org/details/internationalrel01mors.
[11] Article III of the treaty states that '*It being obviously necessary and desirable, that British Subjects should have some Port whereat they may careen and refit their Ships, […], the Island of Hongkong, to be possessed in perpetuity by Her Britannic Majesty, […], and to be governed by such Laws and Regulations as Her Majesty the Queen of Great Britain, […], shall see fit to direct.* See also 'Treaty of Nanjing (Nanking), 1842 | US-China Institute', https://china.usc.edu/treaty-nanjing-nanking-1842.
[12] Article VI of the *Convention of Peace Between Her Majesty and the Emperor of China* cedes '*[…], to have and to hold as a dependency […], that portion of the township of Cowloon, […] of which a lease was granted in perpetuity […].* The article furthermore cancels '*the lease in question*'. See also 'The Hongkong Government Gazette, 15th December 1860, 271.

the Kowloon peninsula, ogled by British land developers and speculators, was acquired after the second Convention of Peking on 16 April 1899 and became known as the New Territories.[13] Comprising over 90% of the colony's territory, the latest addition was transferred under a 99-year lease, with its expiration date set on midnight, 30 June 1997. The reason for a lease was the fear of the British, that should they demand for the cession of the New Territories, other foreign powers in China – France, Germany, and Russia - would press for conversions of their respective leases into cessions as well.[14] With the British Empire at its peak, there was little concern about the 1997 deadline. The administration of yet another of its many colonial accession was more pressing at that time.

Despite the initial dismissal of Hong Kong as 'a barren island with hardly a house upon it', the colony soon flourished under British rule. It was evident from the outset that the raison d'être for Hong Kong was not to be another colonial dependency, but instead a foothold from which to expand Britain's trade interests and economic exchange with the Chinese. It had all the features to cater to said interests: a natural, deep harbour, granting it not only access to Canton but also other trading ports along the Chinese coast. Furthermore, the island appeared easily defensible and at the same time was conveniently located for provisioning and sustaining a garrison and traders.[15]

Capitalism flourished during the colonial period. The implementation of a British jurisdiction guaranteed stability and security, allowing the British traders and their *hongs* to permanently settle down and expand.[16] Initially still used to trade opium, Hong Kong soon became the port of choice for foreign firms and international investors engaged in the China trade, who sought to benefit from the predictability of the British jurisdiction, good government and market economics. Before long, the role of Chinese merchants and traders transformed from middlemen to setting up operations and factories of their own. The economic development required local labour and expertise, leading to a rise in population. Whether providing the manpower to build and expand the city or sustaining the increasing

[13] For the text of the *Convention Between Great Britain and China Respecting an Extension of Hong Kong Territory* see 'Historical Laws of Hong Kong Online | APPENDIX IV - A SELECTION OF CONSTITUTIONAL DOCUMENTS, CONVENTIONS AND TREATIES', https://oe-lawhk.lib.hku.hk/items/show/3631.

[14] Robert Cottrell, *The End of Hong Kong: The Secret Diplomacy of Imperial Retreat* (London: Murray, 1993), 13.

[15] Tsang, *A Modern History of Hong Kong*, 20ff.

[16] The word hong is derived from Cantonese and describes a foreign commercial establishment.

influx of emigrants abroad with a thriving entrepôt trade, the growing Chinese community started to shift the economic balance in its favour. However, despite the wealth of the Chinese eventually surpassing the British, the real economic power still rested with the latter until the end of the 19th century.[17]

The Great Depression did not spare Hong Kong and the city's plight was further exacerbated with the Japanese attack on 8 December 1941, four hours after the air raid on the United States Navy base at Pearl Harbour. The rapid defeat of the British forces stationed in the colony prompted the question of Hong Kong's future to arise for the first time.[18] The issue became crucial in 1942, when the Chinese Nationalist government reserved the right to raise the matter of the New Territories lease at its own convenience. This indicated that the Chinese were fully aware of Hong Kong's lease and its expiration.[19]

The four years of Japanese occupation were marked by the implementation of martial law, as well as them seizing control of governmental duties and trade operations. Japanese culture was forced upon the conquered and harsh punishments were meted out. The shared suffering of the British and Chinese stuck in Hong Kong was eased through closer co-operation between the two communities. A provisional puppet administration was installed, to better collaborate with the Japanese and to monitor the large Chinese community. The new proximity of the British provisional administration to the Chinese population prompted the Colonial Secretary, Franklin Charles Gimson to propose the introduction of, "self-governing institutions to the people of Hong Kong as a whole."[20] In a rare case of foresight for a British official, Gimson recognized that the Chinese would play an ever greater role in shaping Hong Kong and that the necessity for more intricate co-operation was evident. Unfortunately, he faced an entrenched opposition, which preferred to leave the Chinese community in Hong Kong to itself. After the defeat of the Japanese in 1945, the British returned to Hong Kong and restored British colonial administration on 1 May 1946, despite insistence from the Chinese Nationalist government under Chiang Kai-shek that the colony be given back to China.[21]

[17] Tsang, *A Modern History of Hong Kong*, 56ff.
[18] Steve Yui-Sang Tsang, *Hong Kong: An Appointment with China*, 1st ed. (I.B. Tauris, 1997), 28f.
[19] Ibid., 31ff.
[20] Tsang, *A Modern History of Hong Kong*, 126.
[21] Cottrell, *The End of Hong Kong*, 24.

The end of the Second Word War and the withdrawal of Japanese forces resulted in a complicated situation for Hong Kong. During the ensuing civil war between the US-backed Nationalists and Russia-backed Communists over China, Hong Kong's population was very afraid that the violence and chaos might spill over into the territory. Surprisingly, after the Communists emerging victorious, the People's Liberation Army stopped at the territory's border. Advancing further would have been viewed as a declaration of war on an ally of the United States. Cottrell identifies further reasons, speculating that the communist leader Mao Zedong might already have acknowledged the economic value of the city, and perhaps even foreseen a political leverage in future negotiations.[22]

Hong Kong's unique position allowed for intense trade, investments, and monetary transactions with mainland China after the establishment of the People's Republic in 1949. The Communists recognized the value and importance of the British enclave for their own growth and prosperity. Therefore, they did not openly interfere with the local government, tolerating the capitalist enclave next to communist China. Hong Kong turned into 'China's lifeline' during the Korean War, were it was used by the Chinese Communist Party (CCP) to circumvent the United States' (1950) and United Nations' (1951) embargoes imposed on China.[23] In addition, Hong Kong became a base for the Chinese Communists' world-wide operations against 'American imperialists'.[24]

Unfortunately, Hong Kong lost its place as an entrepôt between China and the West due to the embargoes. Its strategy for survival was to facilitate the smuggle of crucial goods into the People's Republic, such as medical supplies, petrol, or vehicle parts.[25] Despite the setback, Hong Kong's economy took off in the late 1960s. With the Cold War embargoes restricting Hong Kong's merchant class, the economy diversified away from trade only towards industrialization (clothing, electronics, plastic, textiles). This change in economic existence resulted in Hong Kong becoming one of the pioneers of eastern industrialization, founded on light industry and export trade, as well as the resourcefulness and entrepreneurial spirit of its business class and hard-working immigrants and refugees. The Hong Kong government, always keen on remaining independent from the Royal Treasury, now had a

[22] Ibid., 26.
[23] Cottrell, 27.
[24] Tsang, *A Modern History of Hong Kong*, 154.
[25] Ibid., 112.

budgetary surplus. The disastrous politics of the Great Leap Forward[26] (1958-1962) and the Cultural Revolution[27] (1966-1976) under Chairman Mao Zedong led to an influx of Chinese refugees, fleeing from the brutality of the communist regime and sowing the seeds for a distinct Hong Kong identity. The immigrants added to the workforce, and additionally, rich companies from Chinese cities such as Shanghai relocated to Hong Kong to avoid Communist intervention. These two factors created vast pools of cheap labour and plenty of investment. Serving as the largest employer, landlord and constructor, as well as having the financial means, the colonial government initiated infrastructural prestige projects such as the Cross-Harbour Tunnel[28], invested in free compulsory, primary education and expanded public expenditure in housing, health services, higher education. While transitioning from austerity to stimulating growth, taxation was kept at a low. The favourable economic conditions led to an increase in population from 2 million in 1950 to around 6 million in 1990, hand in hand with steadily rising property prices.[29] The fast, economic development led to a transformation of the people and the environment. The high influx of immigrants resulted in land reclamation and public housing programmes, driving Hong Kong's skyscraper upwards, and shaping its distinct skyline. Additionally, many schools were built in the 1950s and 1960s, guaranteeing an education after British fashion. The levels of income and social inequality continued to rise, driving disease, poverty, and crime up as well.

Hong Kong's economy became increasingly integrated with mainland China by the 1970s, especially with after trade embargos for non-strategic goods were lifted in 1971 and President Nixon's visit to China in 1972. After the death of Mao Zedong in 1976, Deng Xiaoping attempted to modernize China's economy with his policy of reform and opening. This favoured the expansion of Hong Kong entrepreneurs into mainland China, coupled with huge investments.[30] The Sino-British Joint Declaration of 1984 furthermore eased uncertainties regarding the until then successfully ignored 1997 deadline. The stability it provided for the Hong Kong-China trade prompted Hong Kong businessmen to relocate their factories onto mainland China.[31]

[26] During the Great Leap Forward, the Communists attempted to forcefully turn China's largely agricultural society into an industrialized nation, seeking to surpass the British in steel production. The organization of farmers into communes for steel smelting resulted in their absence from the fields, leading to massive famines.
[27] For a definition of the Cultural Revolution, see page 16.
[28] The Cross-Harbour Tunnel is an underwater tunnel, connecting Hong Kong Island and Kowloon.
[29] Tsang, *A Modern History of Hong Kong*, 170ff.
[30] Percy Cradock, *Experiences of China* (London: John Murray, 1994), 163.
[31] Tsang, *A Modern History of Hong Kong*, 175ff.

## III. Democratic Development

In his latest book, *First Confession, A Sort of Memoir*, the last Governor of Hong Kong, Chris Patten poignantly asks the question: "Why was Hong Kong not already well on the road to democracy, let alone to being a fully democratic society, well before Britain's departure from responsibility for this great city?"[32] He then continues to provides a first glimpse at his answer, namely the opposition of the British business community during the 19th century and the first half of the 20th. The second part of Patten's answer deals with the historical events impeding an early democratization in Hong Kong. Throughout the majority of the 20th century, regional unrests such as Japan's invasion of China, the civil war between the Nationalist Government and the Chinese Communist Party and the turmoil of the Cultural Revolution under Mao Zedong were regarded as reasons to dismiss the implementation of democracy.[33]

The ratification of the Treaty of Nanjing on 26 June 1843 enabled the British to establish Hong Kong as a Crown Colony.[34] Hong Kong's government under British rule was installed on 5 April 1843 under the Letters Patent, which served as a constitutional basis, also known as the Hong Kong Charter. Furthermore, the Royal Instructions dealt with the setup and operation of the colonial government. Under the Crown Colony system, the territory was to be governed by a governor appointed by the British monarch. As the head of the colonial government, the governor served as the Crown's chief representative. He was assisted by an Executive Council (ExCo) as well as a Legislative Council (LegCo), in matters of exertion of authority and legislation, respectively, and on a strictly advisory basis.[35] The governor appointed most members of both the Executive and Legislative Councils. These were official members. Later, unofficial members were allowed to sit on the councils, returned either again through nomination or small-scale elections.[36] On a local level, the administration of the Chinese population fell into the hands of a Chinese

[32] Christopher Patten, *First Confession: A Sort of Memoir* (UK: Allen Lane, 2017), 187.
[33] Ibid., 187.
[34] Martin Wight, *British Colonial Constitution 1947*, Oxford: Clarendon Press, 1952. Wight continues to define Crown Colonies as „dependencies that have been annexed by the Crown. They are thus part of the King's dominion, and their inhabitants are British subjects. […] The inhabitants of ceded colonies had only such rights as the Crown chose to allow them; and in this class of colonies there was first worked out what later came to be known as ‚crown colony' government." See page 5.
[35] Steve Yui-Sang Tsang, ed., *Government and Politics*, A Documentary History of Hong Kong (Hong Kong: Hong Kong University Press, 1995), 21f.
[36] Whereas official ExCo and LegCo members were part of the HK government unofficial members were no members of government and only allowed to sit in and voice their opinions.

bureaucracy, which served as well in an advisory fashion to the new rulers, but had in return no checks and balance system on its powers. In this constellation of power, the governor was at the top, with absolute executive authority, commander-in-chief of the armed forces and vested with the authority to propose laws and ordinances for enaction by the Legislative Council, which in turn was denied this right. The LegCo was therefore the government's weakest branch, reduced to the passing of local ordinances not opposed to the English law, and only allowed to become active at the behest of the governor.

According to Tsang, "the Crown Colony system was never meant to be a democratic system."[37] The usual 'cursus honorum' for British colonies operating under this system was that a gradual expansion of representation in the Legislative Council would eventual lead to a responsible government, and ultimately in the release into autonomy.[38] However, Hong Kong was denied this path, and the first steps of representation were only taken in the early 1990s. Steven Tsang notices, that this basic political system for Hong Kong, with no constitutional checks and balances and as defined by the Hong Kong Charter, was in place more or less unchanged until the handover of the territory in 1997.[39]

The issue of elected representation was first raised in 1859 by Governor Sir John Bowring. His idea to enfranchise 2,000 citizens out of 75,000, including ethnic Chinese, was ultimately rejected by London. The reasons therefore were doubts that the Chinese could not handle the franchise responsibly. In addition, in the spirit of colonialism, the idea that the local, larger population was to be granted power over the minority of British expats was regarded as invidious.[40]

After the terrors of the Japanese occupation, many in Hong Kong remembered the British administration with fondness, praising its benevolence and efficiency. With the return of the British, a return to the status quo ante was neither expected nor desired. Hong Kong's inhabitants developed a '1946 outlook', which meant a desire for "better and fairer treatment, removal of corruption, [and] a greater say in public affairs."[41]

[37] Tsang, *A Modern History of Hong Kong*, 20.
[38] Richard C. Bush, *Hong Kong in the Shadow of China: Living with the Leviathan* (Washington, D.C: Brookings Institution Press, 2016), 10.
[39] Tsang, *A Modern History of Hong Kong*, 18.
[40] Ibid., 26f.
[41] Ibid., 142f.

In the final decades of colonial rule, a partial democratization started to take place. During most of the British rule over Hong Kong, a system of 'consultative colonialism', or 'collaborative colonialism' was in place.[42] The commercial raison d'être never really incentivized the British to govern the local Chinese beyond the scope to create stability and order. The executive-led government would consult the interests of local influential business leaders, of whom the Chinese became ever more numerous. This started with the acceptance of the Tung Wah Hospital Board as a medium between the government and the local Chinese. Acting as a replacement for the sparse resources the government was unwilling to extent to include the larger Chinese population, the Tung Wah Hospital Board took care of issues ranging from medical activities to social services. Hampered by cultural as well as language barriers, it thus gained recognition among both the Chinese population and in the eyes of the expat government.[43] Regarded as 'natural leaders' of the Chinese community, the constant engagement of the Chinese elite for its community and its rising economic importance ultimately lead to the appointment of the first Chinese as an unofficial member to the LegCo in 1880.[44] With the above mentioned purely consultative limitations still in place, the newly granted tenure allowed them to directly voice the concerns and opinions of the larger part of the territory's population.[45]

After the Second World War and the Japanese invasion of Hong Kong, Governor Mark Young pushed for political reforms in 1946. His 'Young Plan' strove for an increase in political participation of the public, by applying the principle of direct representation to some seats of the LegCo. He added another ethnic Chinese as an unofficial member to his Executive Council and intended to promote Chinese civil servants to senior posts in the colonial administration.[46] His aim was to create municipal councils, allowing for a more localized management of the inhabitants' affairs. The governor's proposals were thwarted by the collapse of the Nationalist government in China and the successes of the Chinese Communist Party during the following civil war. Out of fear to polarize the Hong Kong population along these political affiliations, or to mobilize Chinese identity and stirring

[42] See Dexter S. Boniface and Ilan Alon, 'Is Hong Kong Democratizing?', *Asian Survey* 50, no. 4 (August 2010): 793. Or Brian C. H. Fong, 'State-Society Conflicts under Hong Kong's Hybrid Regime: Governing Coalition Building and Civil Society Challenges', *Asian Survey* 53, no. 5 (October 2013): 865, https://doi.org/10.1525/as.2013.53.5.854.

[43] Elizabeth Sinn, *Power and Charity: The Early History of the Tung Wah Hospital, Hong Kong*, East Asian Historical Monographs (Hong Kong ; New York: Oxford University Press, 1989), 90.

[44] Fong, 'State-Society Conflicts under Hong Kong's Hybrid Regime', 864.

[45] Tsang, *A Modern History of Hong Kong*, 70f.

[46] Jonathan Dimbleby, *The Last Governor: Chris Patten & the Handover of Hong Kong* (London: Little, Brown, 1997), 99ff.

anti-colonialist movements, the British were cautious with any political change.[47] Ultimately, Young's successor, Sir Alexander Grantham, a conservative administrator, favoured the establishment of a constructive partnership with the local community, prioritizing matters of livelihood over the expansion of participation.[48] Grantham also argued that since the return of Hong Kong was, albeit of low priority, on the agenda of both the Nationalists and Communists in China, the introduction of direct elections would, "result in the dominance in Hong Kong of Chinese politics."[49]

The failure to implement what can be seen as a missed opportunity to set Hong Kong on the path of the 'cursus honorum' of Britain's Crown Colonies.[50] The fear caused by the instability in the neighbouring mainland resulted in London playing it safe. According to Dimbleby, by the time Grantham was governor, the pressing tone of multiple petitions from communal institutions calling for constitutional reform belied any claim that Hong Kong was 'apathetic' about democracy. These calls were cast aside by the British administration as the clamouring of a 'vocal minority' who 'could not be regarded as responsible'. [51]

In hindsight, with the knowledge about the events unfolding from the mid-1940s onwards, one can say that the 'Young Plan' might have been the last time where the scales of power were tipped in Britain's favour and it could have managed to introduce the first steps of a responsible government in Hong Kong. After the Communist victory, China emerged as a too powerful player for Britain to undertake such unilateral actions.

In 1945, the government in London was already pondering over the moment, when the Chinese side would raise the question of the New Territories lease. Although the government under the nationalist leader Chiang Kai-shek preferred to defer the matter to a later time, given China's weakened condition after the Second World War on the one hand, as well as the domestic challenge the Communists were posing to his regime on the other, London nevertheless drafted several strategy papers. In these, the possible options for a return of the territory were listed, ranging from a partial return of the New Territories after the expiration of the 99-year lease, sharing control over Hong Kong, rejecting

[47] Patten, *First Confession*, 187.
[48] Tsang, *A Modern History of Hong Kong*, 148.
[49] Dimbleby, *The Last Governor*, 102.
[50] Bush, *Hong Kong in the Shadow of China*, 11.
[51] Dimbleby, *The Last Governor*, 103.

any demands for retrocession, or ceding the entirety to China. It must be noted here that no account was taken of the local people's views for any strategy.[52]

In 1946, Mao Zedong, leader of the Chinese Communist Party, declared that the return of Hong Kong was of no matter for him – a view, which he reiterated in 1948, based on the city's economic value for China.[53] However, in the same year he reemphasized that the matter of the Hong Kong question would be raised at a time of China's choosing, following in the footsteps of Chiang Kai-shek, and also seeking to reverse what both regarded as 'unequal treaties'. Until then, the status quo was preferred.

During the end of the era of decolonization, Zhou Enlai, the first Premier of the People's Republic of China, met with Governor Grantham in 1955, declaring that the British presence in Hong Kong would only be tolerated if certain 'rules of conduct' where to be followed. One of these rules was the interdiction to steer Hong Kong along the path of other Crown Colonies, namely towards democracy or self-government.[54] China feared that a change of Hong Kong's constitutional status from Crown Colony to independent entity would lead the Americans, with whom relations were at a new low after the Second Taiwan Strait Crisis[55], to weaken China. Beijing's concerns aligned with those in Hong Kong and London who advised against change of the status quo.[56] China's objection to any constitutional change in Hong Kong played into the hands of the colony's business elite arguing against the implementation of democracy, which it perceived it as detrimental to the practices of capitalism.

With a stabilization of the Sino-British relations in the early 1970s, Premier Zhou expressed his confidence to settle the Hong Kong problem through negotiations and envisioned the end of the New Territories lease in 1997 as an appropriate time.[57] Until the end of the 1970s, the strategy for survival for all the parties was to ignore the 1997 deadline: Britain was left to tinker on a strategy for when the time came and China raised the issue; China reaped the benefits of its 'goose that laid golden eggs'; and the population was

[52] Tsang, *A Modern History of Hong Kong*, 149f.
[53] Ibid., 153.
[54] Cottrell, *The End of Hong Kong*, 27.
[55] Also called the 1958 Taiwan Strait Crisis, the Second Taiwan Strait Crisis was a conflict between the PRC and the Nationalist government on Taiwan. The Chinese shelled islands off Taiwan's coast, to both provoke the Nationalists and to test the extent of the United States' defense pledge to Taiwan.
[56] Patten, *First Confession*, 188.
[57] Kevin Rafferty, *City on the Rocks: Hong Kong's Uncertain Future* (New York, N.Y., U.S.A: Viking, 1990), 411.

hopeful that the People's Republic may allow the status quo to go on as long as it proved advantageous.[58]

During the time of Hong Kong's economic take-off after the Second World War, the city's industrialists – now consisting of a Chinese majority - focused mainly on restoring the city's status as a premier entrepôt and expanding their industries. Their primary interests lay with industry and commerce, not politics, and they were not yet represented in the Legislative Council.[59]

April 1966 saw two days of unrest in Hong Kong with the Star Ferry Riots. Initially triggered by the slight increase of the nowadays famous ferry service between the Victoria Harbour on Hong Kong Island to Kowloon, the riots quickly escalated into demonstrations against Hong Kong's rapidly increasing living costs and income inequality, offering a glimpse into the serious social questions and conditions young people were discontent with.[60] Albeit having profited from the government's earlier education expansion, they were frustrated with the slim possibilities to better their lot in life in a city with a considerable gap between the rich and the poor.[61]

The Star Ferry Riots were soon overshadowed by a period of unrest in 1967 dubbed 'the Confrontation'.[62] In 1966 Chairman Mao had unleashed the Cultural Revolution on the mainland, in an attempt to reaffirm his authority over the Chinese Communist Party and to oust any follower who had in his eyes deviated from the party's policy line. In order to get rid of any perceived or real challenger, Mao called upon his Red Guards to move against and attack his political enemies, and to also instil a new revolutionary fervour in a young generation. His call to war against his own political party threw China into ten years of chaos and led to the loss of an entire generation.

Communist branches in Hong Kong were afraid of being perceived as not loyal enough by Beijing. The tried to take advantage of smaller labour disputes in Hong Kong to instigate a second, parallel Cultural Revolution. This revolutionary self-preservation was mildly backed by the central government in Beijing.[63] The Hong Kong Communists quickly

[58] Tsang, *A Modern History of Hong Kong*, 159f.
[59] Ibid., 161.
[60] The costs for a cross-harbour first-class transfer were raised by 5 cents.
[61] Tsang, *A Modern History of Hong Kong*, 188f.
[62] John Cooper, *Colony in Conflict: The Hong Kong Disturbances, May 167-January 1968* (Hong Kong: Swindon Book Co, 1970), 2.
[63] Tsang, *A Modern History of Hong Kong*, 185.

took over the initial labour demonstrations and organized large-scale marches and protests against the British government. A campaign of terror was unleashed from May to December 1967, with a series of indiscriminate bombings and threats of assassinations intended to paralyze the city and rile up the local population against their colonial oppressors. However, the only thing the communists succeeded in, was to sway Hong Kong to favour the British government. Hong Kong's resentment against the mainland was further entrenched and Hong Kong's police force and its professional handling of the turmoil was regarded with profound respect. Forcing the people to choose between their ancestral home and the British government, "[for] the first time in Hong Kong's recent history, the inhabitants believed that the British-Hong Kong government was 'their' government."[64]

The end of this violence saw the emergence of increased participation in the form of the City District Officers, created to better cater to the concerns and needs of the Hong Kong population on a local level. The governments connection and communication to the Chinese population of Hong Kong was reviewed in general and improved by social welfare programmes and the initiative to involve young people in the city's events. Furthermore, the ancient Crown Colony system was slowly transformed under Governor David Trench into a modern administration, responsive to the public opinion in its entirety.[65]

Interestingly, with the government's efforts to become more responsive, the campaign against corruption initiated by Trench's successor, Sir Murray MacLehose, the British colonial administration had transformed itself by 1980 into a government that met all the requirements of a perfect government according to Confucian tradition. These were efficiency, fairness, honesty, benevolent paternalism, and non-intrusion into the lives of ordinary people.[66] It excelled in efficiency, governing a territory of 5 million inhabitants with a relatively small body of colonial administrators; it was non-intrusive, largely due to the administration's small size when compared to Hong Kong's population. Also, when compared to the authoritarian communist regime on the mainland from 1949 onwards, people regarded the British government with benevolent eyes. After 1945, all of its citizens were treated fair, and according to the rule of law, enjoying an ever-improving judiciary and the abolition of cultural and racial prejudices.

[64] Ming K. Chan and John D. Young, eds., *Precarious Balance: Hong Kong between China and Britain, 1842-1992*, Hong Kong Becoming China, vol. 4 (Armonk, N.Y: M.E. Sharpe, 1994), 140.
[65] Tsang, *A Modern History of Hong Kong*, 190.
[66] Ibid., 197.

In rooting out corruption after it had plagued the colony since its inception, Governor MacLehose fulfilled the Confucian criterium of honesty. The last condition, benevolent paternalism was met with the ever-expanding expenditure on social welfare programmes, such as housing or free compulsory education. However, despite the British government reaching Confucian perfection by 1980, its constitutional structure was still that of a Crown Colony. As Dimbleby puts it "There was one glaring omission: the failure of the colonial authorities to make any significant concession to a cardinal principle of twentieth-century governance – that no society could claim to be civilised until the will of the peoples, as expressed freely through the ballot box, was held to be inviolable."[67]

No real politization of the population took place until the late 1970s. People were mainly preoccupied with carving out an existence for themselves, so there was no need for change. Mainland refugees were looking to settle down after escaping the turmoil in China, find an occupation, and work towards a better future for their children. Chris Patten remarks that, "Without politicians, so it was argued, Hong Kong managed its affairs conspicuously well."[68] This stemmed mostly from the "refugee mentality" of the local population, which spawned only a low level of political mobilization and minimal popular expectations of the government. Only after the 1970s did local civil society become more active. With growing wealth and rapid socioeconomic development, Hong Kong's people began to develop a stronger sense of local identity that replaced the previous immigrant-refugee mentality.[69] The earliest "infusion of democracy", as Sir Percy Cradock calls it, came in 1981. For the newly created District Boards, which constituted the lowest level of local government, direct elections were introduced for a minority of seats.[70]

## III.I. The Sino-British Joint Declaration

The Chinese, from the Nationalist government of Chiang Kai-shek to the Communist Party under the leadership of Mao Zedong, had always reserved the right to raise the issue of the Hong Kong question at a time of their convenience. Yet it was the British who eventually initiated the process.[71] In 1979 Governor MacLehose visited Beijing,

[67] Dimbleby, *The Last Governor*, 36.
[68] Patten, *First Confession*, 25.
[69] Fong, 'State-Society Conflicts under Hong Kong's Hybrid Regime', 859.
[70] Cradock, *Experiences of China*, 226.
[71] *From Selected Works of Deng Xiaoping*, Volume III <1982-1992>. https://www.chinadaily.com.cn/china/19thcpcnationalcongress/2010-10/20/content_29714511.htm.

following an invitation by the Chinese upon the announcement of Deng Xiaoping's policy of 'reform and opening'.[72] Economic worries prompted the British to initiate talks with the Chinese.[73] The eventual expiration of individual land leases in the New Territories granted under the British Crown was, according to Cottrell already discussed by the Hong Kong government under Sir Cecil Clementi and the Colonial Office in the late 1920s.[74] Although factual sovereignty over the New Territories still rested with the Chinese, the British treated them as if they were property of the Crown and handed out individual land leases, which were due to expire three days before the 99-year lease itself.[75]

With only 18 years left in 1979, and banks usually dealing in 15-years mortgage loans, concerns about the territory's future started to arise with entrepreneurs.[76] The British sought to establish confidence in the future of the territory and to put investors' minds at ease.[77] Cottrell argues however, that the business community was not as anxious as often portrayed. Rather, the government worries were more pressing, having initiated a series of large construction projects and having handed out loans with repayment schedules running up until 2002.[78] Therefore, it needed a reassurance over Hong Kong's future. With the upheavals of the Cultural Revolution calming down after the death of Mao in 1976, Deng Xiaoping as the new leader of the CCP was bent on rapidly modernizing China. The British intended to make use of that perceived window of stability in China and tackle the question of land leases well ahead of the 1997 expiration deadline.[79] In the words of Percy Cradock: "We could not be sure how long this situation would last. We would be wise to exploit it while we could."[80]

For a while several possibilities regarding the expiration of the lease appeared to be viable in their eyes: do nothing and let things play out; change the legality of the terms under which Britain's authority to govern the New Territories stemmed; or only retain the

[72] Tsang, *A Modern History of Hong Kong*, 212.
[73] Cottrell, *The End of Hong Kong*, 35.
[74] Ibid., 20ff.
[75] Ibid., 14f.
[76] Tsang, *A Modern History of Hong Kong*, 213.
[77] Cradock 165.
[78] Cottrell, *The End of Hong Kong*, 41ff.
[79] Danny Gittings, *Introduction to the Hong Kong Basic Law* (Hong Kong University Press, 2013), 9f.
[80] Cradock, *Experiences of China*, 165.

territory ceded to them in perpetuity.[8182] However, all unilateral decisions would have led to strong responses, keeping in mind the Chinese position,, expressing their intentions to recover the whole of Hong Kong.[83] Administratively, Hong Kong Island and the Kowloon Peninsula, making up only 8% of the territory administered by the British, were and still are dependent on the New Territories for their food and water supply. It would have been an easy move for the Chinese to deprive the British controlled parts of the territory of vital necessities.[84]

With the help of Sir Edward Youde[85] and ambassador to Beijing, Sir Percy Cradock, the governor intended to raise the issue of land leases under the premise of 'stability and prosperity' for Hong Kong, which would become a mantra for the Sino-British negotiations, and is also employed by the Chinese Communist Party to this day when addressing change and reform in Hong Kong.[86] This commercial, 'sidelong approach' was chosen to probe at the Chinese intention towards the future of Hong Kong, as well as to avoid any political confrontation.[87] The British, well aware of Hong Kong's boon for China, hoped that the Chinese economic interest in the city and its value to the PRC would allow them to either maintain the status quo, postpone the 1997 lease expiration, or even abolish it altogether.[88] What they failed to take into account was the Chinese view on the matter. Albeit of enormous economic importance for the socialist reconstruction of China's economic growth, the overriding sentiment still was that the Chinese sought to annul the 'unequal treaties' under which Hong Kong was ceded to the British in the previous centenary and to reunify the entire territory with the mainland once again.[89] A sentiment, which was

[81] The British declared in *The New Territories Order in Council* in the name of the Queen on 20 October 1980, that the leased New Territories to be treated as an integral part of Hong Kong until the handover in 1997 "*[…] for all intents and purposes as if they had originally formed part of the said colony.*" See also Clause 1 of The New Territories Order in Council, in Peters Wesley-Smith, *Unequal Treaty 1898-1997: China, Great Britain and Hong Kong's New Territories* (Oxford University Press, 1998), pp. 321-322.

[82] Cottrell, *The End of Hong Kong*, 44.

[83] Ibid., 71.

[84] Patten, *East and West*, 12f.

[85] Sir Edward Youde was the British ambassador to Beijing until 1978. He afterwards returned to the Foreign Office and was responsible for its Far East policy, until succeeding MacLehose as Hong Kong's governor in 1982.

[86] Cottrell, *The End of Hong Kong*, 62. For an example of a more recent use of 'stability and prosperity', see Tony Cheung et al, "Two Sessions 2020: Hong Kong leader Carrie Lam vows 'full support' for national security law and promises city's freedoms will remain unaffected", *South China Morning Post*, 23 May, 2020. https://www.scmp.com/news/hong-kong/politics/article/3085741/two-sessions-2020-hong-kong-leader-carrie-lam-vows-full

[87] Cottrell, 50.

[88] Tsang, *A Modern History of Hong Kong*, 217.

[89] Cradock, *Experiences of China*, 164.

paradoxically best captured by the head of the China Department of the Foreign Office in 1946, George Kitson, shortly after the return of the British to Hong Kong after the Japanese occupation and when the question of its long-term future arose:

> Supposing the Chinese had taken the [Isle of Wight] against our will 100 years ago and covered it with pagodas, etc., and developed it by means which they had invented and we had not learned to use, doing all this for their own purposes, although talking a great deal about the material advantages to the United Kingdom, and all the time emphasising the value of this haven of good government, a protection against insecurity, in the Isle of Wight. Even if they had created a heaven on earth in that small island we should have only one feeling about it. We should want it back.[90]

All the British managed, was to anger the Chinese and put the question of the Hong Kong problem on the leadership's agenda. Deng Xiaoping had not yet established himself as a leader of the CCP by 1979, and the question of Hong Kong was of no closer concern. What he did instead, was to reassure the British that the businessmen of Hong Kong should remain at ease and that China's position to recover Hong Kong in its entirety was unchanged.[91]

Aware of the economic value Hong Kong posed for the mainland, the Chinese were eager to maintain the status quo. Therefore, in line with what had been uttered decades ago by the Nationalists and premier Zhou Enlai in 1970, they preferred no change whatsoever.

Apparently, some actors of the Chinese government were ready to have a continuation of British administration of the territory in one form or another.[92] Deng Xiaoping however, initially bent on smoothening out China's relationship with the United States and keen on achieving national unification with Taiwan, changed tactics and now diverted his attention to Hong Kong. Relations with the US were at a low and the prospect for a swift, peaceful unification with Taiwan at the end of the 1970s slim.[93] The successful handover and re-integration of Hong Kong on the other hand, coupled with the rectification of China's humiliation at the hands of the foreign powers and their 'unequal treaties', should

[90]Tsang, *A Modern History of Hong Kong*, 149.
[91] Cottrell, *The End of Hong Kong*, 54ff.
[92] See Frank Ching, "Looking Back: How London and Beijing Decided the Fate of Hong Kong", *Hong Kong Journal*, Vol. 18, April 2010.
[93] Dong Wang, *The United States and China: A History from the Eighteenth Century to the Present*, Asia/Pacific/Perspectives (Lanham: Rowman & Littlefield Publishers, Inc, 2013), 173ff.

persuade Taiwan to re-join China as well.[94] Furthermore, Hong Kong's contribution to China's economy would have given Deng more leverage against his critics when it came to argue for his policy of 'reform and opening'.[95]

To better deal with Hong Kong, the PRC set up the Hong Kong and Macao Affairs Office (HKMAO). Its first task was to establish a united front in Hong Kong.[96] In March 1981, the HKMAO was tasked by the CCP Politburo to work out a policy paper for the recovery of sovereignty over Hong Kong, as well as to ensure the continuing economic benefit to the PRC. Despite initial resistance to the concept of 'one country, two systems' by some senior party members, fearing that the inclusion of a capitalist enclave would endanger the socialist regime on the mainland, Deng managed to assure that his policy would "benefit and not undermine, Communist Party rule in the PRC."[97] Chris Patten argues in his book *East and West*, that Deng decided to introduce capitalism bit by bit because Communism under Mao Zedong had failed and this failure now threatened the CCP's position of power. The only way to cling to power was to better the lives of China's vast population, which in turn was only possible by modernizing the country.[98] Enter Hong Kong's role in China's economic modernization as a source of expertise and investment.[99] A tactic employed by China was to invite prominent Hong Kong citizens to Beijing to foster a better understanding and build confidence and contacts. Rafferty observes that the Chinese actually intended to pursue the Hong Kong visitors that the ongoing prosperity and stability of Hong Kong would lie with the handover of the territory to the PRC. When some of his visitors spoke their mind and voiced their concerns, Deng would scold them, insisting that the Communist leadership in Beijing knew better what Hong Kong really wanted.[100]

By 1982 the Chinese were ready to engage in talks with the British and preparations for the visits of Britain's Prime Minister, Margaret Thatcher were made. Cradock observes,

[94] Tsang, *A Modern History of Hong Kong*, 216.
[95] Cottrell, *The End of Hong Kong*, 58.
[96] The tool of the united front originated during the earliest days of the Chinese Communist Party, describing a popular front consisting of the Communist Party and whichever element of society – i.e. other political parties, the bourgeoisie – it deemed suitable for co-operation towards a common goal. Under Mao, the Second United Front between the Chinese Nationalist Party and the Communist Party of China fought against the Japanese aggressors during the Second Sino-Japanese War (1937-1945).
[97] Tsang, *A Modern History of Hong Kong*, 217.
[98] Patten, *East and West*, 142.
[99] Cottrell, *The End of Hong Kong*, 38f. The Four Modernizations set forth by Deng Xiaoping sought to improve China's fields of agriculture, industry, defense, and science and technology.
[100] Rafferty, *City on the Rocks*, 438ff.

that the Chinese now had the initiative, after resisting further British attempts to raise the issue.[101] While the British were still working on their policy, the Chinese had adapted their 'Nine-Point Plan', which was initially aimed at a peaceful reunification with Taiwan, to the 'one country, two systems' framework for Hong Kong.[102] China's National People's Congress had also adopted a new constitution, which allowed China to establish 'special administrative regions' (SAR) under Article 31.[103]

Thatcher soon brought the talks to a standstill with her harsh demeanour.[104] Margaret She happened to have her attention turned towards Hong Kong shortly after the United Kingdom's victory in the brief Falklands War with Argentine in 1982. Having resolved that matter of sovereignty over another British colony, Thatcher assumed the same attitude in the negotiations over the future of Hong Kong.[105] She took a hard and uncompromising stance against the Chinese negotiators, insisting on the validity of the treaties from the previous century and British sovereignty over Hong Kong. In an interview she stated: "One point about the treaties. I believe they are valid in international law. And if countries try to abrogate treaties like that, it is very serious indeed. Because if a country will not stand by one treaty, it will not stand by another treaty. And that is why you enter into talks. […]"[106]

Her desire to keep Hong Kong was seen as a grave insult by the Chinese, who multiple times reminded her of their position on the 'unequal treaties' and their intention, to assume sovereignty over Hong Kong in its entirety.

Meanwhile, Governor Youde had decided to confide in his ExCo to make government work easier and establish a 'three-legged stool' for the negotiations. However, China insisted that Hong Kong itself could not be involved in the talks, already regarding it as a part of the mainland. Beijing's immovable stance on this point thwarted the British plans to include Hong Kong, and in the end, Hong Kong had no choice but to accept the

[101] Cradock, *Experiences of China*, 173.
[102] New China News Agency, 30 September 1981. For a discussion of the 'Nine Points', see Cottrell 65.
[103] Article 31 of the *Constitution of the People's Republic of China* states: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in light of specific conditions."
[104] During one visit to Beijing, Margaret Thatcher fell in front of the Great Hall of the People down the steps to Tiananmen Square, which was taken by some as the British know-towing towards the mausoleum of Chairman Mao and an ill omen for the future of Hong Kong.
[105] Cradock, *Experiences of China*, 174.
[106] Cottrell, *The End of Hong Kong*, 1993.

agreement reached by the British and the Chinese. The ExCo was thus able to give advice and voice their opinions but never actually participate in the negotiations.[107]

With the Sino-British negotiations in a deadlock, Thatcher considered the option to put the matter before a UN referendum. To avoid a total collapse and prevent any unilateral Chinese actions, Cradock employed a tactic he called the 'first finesse': In order to maintain control, he proposed to cede sovereignty, but suggested that British administration after 1997 was vital to the continuous prosperity and stability of the territory.[108] Therefore, should matters of administration be debatable with the Chinese, then Margaret Thatcher was willing to talk to the British parliament about the ongoing sovereignty over Hong Kong. [109]

The 'Nine Points' for Taiwan were reformulated into a 'Twelve-Point' plan for Hong Kong by the HKMAO in 1983 and unveiled to a group of Hong Kong students on visit in Beijing.[110] The leader of the CCP guaranteed the adherence to the provisions outlined in the 'Twelve-Point' plan for the unambiguous transfer of sovereignty over Hong Kong from Britain to China.[111] For Chinese, the concept of sovereignty embraced administration, thus defeating the first finesse drafted by Sir Cradock.[112] China News Agency published on 15 September: "If administrative powers remain in British hands, how can China be said to have recovered sovereignty? In what sovereign state in the world is administrative power in the hands of foreigners? […]"[113] Deng stated that he could not surrender Hong Kong a second time, comparing himself to the official Li Hongzhang, who had signed away the New Territories in 1898.[114]

The British realized the need for compromise, to avoid instability in Hong Kong and unilateral actions from the Chinese. The answer was Cradock's 'second finesse': The British views on administration remained unchanged, however they were willing to explore

[107] Ibid., 104.
[108] Cradock, *Experiences of China*, 185.
[109] Dimbleby, *The Last Governor*, 47.
[110] For a detailed analysis of the 'Twelve-Point' plan see Cottrell, 112. The relevant points for this thesis include Hong Kong: - not being run by emissaries from Beijing; - have a 'mayor' elected by local inhabitants, who should be a 'patriot'; - run its own affairs without central government interference, […]; conduct its own 'social reforms' without impositions from Beijing.
[111] Patten, *East and West*, 29.
[112] Cradock, *Experiences of China*, 188.
[113] Cottrell, *The End of Hong Kong*, 119.
[114] Ibid., 19.

the Chinese proposals, who so far had rejected any notion of a continuation of British administration, to see whether arrangements might be made to ensure the stability and prosperity of Hong Kong.[115] According to Cottrell, the willingness to explore China's views put the argument over administration on the backbench, unofficially ending it and allowed the negotiations to continue.[116] With the deadlock broken, the Chinese declared their concession to maintain the current system in Hong Kong for 50 years after 1997.

In 1984 the British started to explore the Chinese 'Twelve-Point' plan, only to discover that behind the 12 principles outlined there was nothing of substance to build upon. Realizing their chance, the British took it upon themselves to fill the void with their demands and started negotiations about details.[117] Surprisingly, the Chinese accepted many of the British proposals, making only small alterations.

The final negotiations over the Sino-British Joint Declarations were marked by the stark contrast between the two sides: the Chinese preferred brief, superficial statements, to give China a certain flexibility at a later stage.[118] The British struggled to reach a sufficient degree of detail, expressed in the declarations annexes. Both parties agreed that the annexes will be of equal validity as the text of the declaration itself.[119]

Apart from mistrusting any political change in Hong Kong, the Chinese were also suspicious of British economic actions. Lord Wilson suggested the building of a new airport after the Tiananmen Square protests[120] as a morale booster for the community, and to maintain and increase the prosperity of the territory before the handover pre 1997. [121] Beijing feared that the British would empty the coffers with increased public spending before handing over the territory.[122]Therefore, they urged for a 'transitional agreement', where they sought to pre-emptively exert more control in Hong Kong before the handover. They

[115] Cradock, *Experiences of China*, 190f.
[116] Cottrell, *The End of Hong Kong*, 130.
[117] Gao Wanglai, 'Negotiating with China in Power Asymmetry: The Case of Sino-British Negotiations on the Handover of Hong Kong', *International Negotiation* 14, no. 3 (2009): 488, https://doi.org/10.1163/138234009X12481782336186.
[118] Cottrell, *The End of Hong Kong*, 166.
[119] Cradock, *Experiences of China*, 213.
[120] The Tiananmen Square protests sparked by the death of a popular reformist , Hu Yaobang. The students participating in the protests soon started to criticize the CCP, demanding for a reform of the political system and the introduction of democracy. Fearing the loss of power and control, the leadership declared martial law and tasked the People's Liberation Army with dispersing the peaceful crowds and restoring order. Another side effect was the annual June 4th vigil, where people gather in Hong Kong to commemorate the date.
[121] Patten, *East and West*, 40.
[122] Cottrell, *The End of Hong Kong*, 82.

wished to install a Joint Liaison Group as an organ of power, demanding to be consulted on almost all major and minor changes envisioned by Britain in Hong Kong until 1997. Finally, it was agreed that the Joint Liaison Group would be set up in 1988 as a purely consultative body, to avoid the instalment and operation of a parallel shadow government before the Chinese regaining sovereignty.[123]. In addition, the consultative work of the Joint Liaison Group would continue until 2000, giving Britain a degree of oversight after the handover. Ultimately, the British managed to achieve the sole responsibility to administrate Hong Kong until the handover, with China relegated to a consultative and co-operational role.

The Joint Declaration was signed after two years and 22 rounds of talks by Margaret Thatcher and Premier Zhao Ziyang on 19 December 1984.[124] At the core of the Joint Declaration are the twelve points laid out by China, with the British contribution written down in the annexes. They outline the preservation of the capitalist system in Hong Kong, establish its autonomy towards China, especially in the areas of economy, legal system, and personal freedoms. Cottrell notices the absence of any declaration of the territory moving towards representative government. Instead, Hong Kong emerged as a distinct entity, able to participate in international forums and enter into agreements. The new definition of executive-led government – power vested in the future chief executive of the region – perpetuated the colonial system. Freedoms of speech, assembly, and the press, as well as religious practice and travel were all enshrined in the final document.[125] The importance of the Joint Declaration annexes must be mentioned here. Cradock describes Annex I as, "the meat of the agreement […]. It was extensive, detailed and cast in the precise, lawyer-like language we wanted. It covered virtually every aspect of Hong Kong life, beginning with constitutional arrangements and the legal system, and passing on to a variety of other sectors."[126]

On the absence of major commitments towards democratization and the implementation of universal suffrage in the Joint Declaration, Chris Patten notes, that "[f]rom the outset in 1982 of its negotiations with China on Hong Kong's future, Britain made plain its commitment to the maintenance of capitalism and freedom in the territory."[127] The

[123] Gittings, *Introduction to the Hong Kong Basic Law*, 16.
[124] Deng Xiaoping described the Joint Declaration as 'a product of dialectical Marxism and historical materialism', whereas Margaret Thatcher is said to have uttered solely, that it was 'an ingenious idea.' See Cottrell. 174.
[125] Cottrell, *The End of Hong Kong*, 165f.
[126] Cradock, *Experiences of China*, 208.
[127] Patten, *East and West*, 29.

provision that the legislature post 1997 should be 'constituted by elections' was actually a last minute concession Britain brought up.[128] Cottrell mentions, that one Chinese official reportedly said off-the-records that the phrase was accepted by China in 1984 only for the sake of maintain good relations with London.'[129] Eric Ip, argues that due to Beijing's view of Hong Kong's inhabitants being politically apathetic and more interested in materialism, and the city's economic importance to the mainland, acceding to "a few ambiguous political reform clauses in the Basic Law burnished China's international reputation without sacrificing and of its material interests".[130] The questions of representative government, universal suffrage or a democratization of the territory were at that time neither high on the British agenda, nor of importance to Hong Kong's ExCo. [131]

According to Cradock, Britain had extracted the maximum of concessions from Beijing and the Joint Declaration was the best possible outcome the British could have bargained for in Hong Kong's name.[132] With a shift in the balance of power favouring the Chinese, the British realized that they were in no position to undertake unilateral actions anymore and therefore decided to consult with China, also to give the final, communally reached decision an air of international legality.[133] His theory of having reached the Chinese limits was to be proven at later stage, when events around Hong Kong's last governor unfolded. For Cradock it was clear from the beginning that the Chinese would be very suspicious of any British action in the territory, and that the Chinese were having all the cards in their hands. The Chinese desire to reclaim Hong Kong was not a question of if, but rather when. Realizing that Hong Kong was indefensible against the PLA, China could claim the territory unilaterally and by force at any time. The pragmatic approach led to many of his critics decrying his actions as mirroring Chamberlain's politics of appeasement towards Germany on the eve of the Second World War. Accused of embarking upon said policy, giving in to their demands of consultation and co-operation, it seems that there was no other course of action. Correctly foreseeing China's desire to reclaim the territory in its entirety, Cradock initiated a policy of orderly and honourably retreat, resulting in the first and second finesse. Cradock himself always regarded his policies guided by a realistic view of the

[128] Cottrell, *The End of Hong Kong*, 171.
[129] Ibid., 235.
[130] Eric C. Ip, 'Constitutional Conflict in Hong Kong Under Chinese Sovereignty', *Hague Journal on the Rule of Law* 8, no. 1 (April 2016): 79, https://doi.org/10.1007/s40803-016-0025-y.
[131] Cradock, *Experiences of China*, 226.
[132] Ibid., 214.
[133] Cottrell, *The End of Hong Kong*, 47.

situation.[134] The British regarded the cession of sovereignty without a fight as a terrible political blunder.[135]

The Chinese stance during the negotiations shows the change in the Sino-British relationship. When in 1842 the British were able to dictate the terms upon which Hong Kong was ceded to them, now the Chinese were threatening unilateral actions in the face of collapsing talks. This willingness was displayed in unilateral announcements of plans and intentions. For example, while the British would have preferred to keep the talks confidential, the Chinese regularly breached this by leaking information, procedures and their own plans for the territory to the press or Hong Kong visitors.[136] Often, the British found out about China's intentions through the Hong Kong or Chinese media.[137] Finally, China's superior position was also expressed in it successfully barring Hong Kong from the negotiation table. The ExCo was only kept in the loop due to the insistence of Governor Youde, but apart from voicing its opinions, Hong Kong had no larger role to play.

## III.II. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

The inclusion of Article 31 in the 1982 Constitution of the PRC enabled the Communist leadership to establish Hong Kong as a Special Administrative Region (SAR) under Chinese law. Here the British managed to secure that the Basic Law were to be drafted according to the policies set out in the Joint Declaration, thus limiting China's ability to deviate from the latter post 1997.[138]

The drafting process started in 1985 with the formation of a Basic Law Drafting Committee by China's National People's Congress (NPC).[139] The committee was composed of 36 mainland and 23 Hong Kong drafters. The drafting of the Basic Law occurred within several sub-groups, each of which was responsible for various aspects to be covered by law post 1997. In order to already exert a certain measure of control and influence prior

[134] Dimbleby, *The Last Governor*, 38.
[135] Cradock, *Experiences of China*, 99.
[136] See Cottrell 99, where he describes how the principle 'Hong Kong people rule Hong Kong' was unveiled to a Hong Kong delegation during a trip to Beijing.
[137] Ibid., 82.
[138] Cottrell, *The End of Hong Kong*, 161.
[139] The National People's Congress is also described as China's parliament and is the highest organ of state power in China. For a more detailed description, see Gittings, 20.

to 1997, the leadership in Beijing insisted that any changes envisioned by Britain to be in line with the provisions of the Basic Law. The logic of Beijing was, as the content of the Basic Law would regulate life and order in Hong Kong after 1997, the British should alter the political system prior to 1997 only in accordance with the Basic Law, to ensure a smooth transition, as well as stability and prosperity.[140]

This principle was dubbed 'convergence' by the Chinese.[141] By having the British agree to this, the Chinese scored a major victory in the remaining transitional period, managing to force the British to consult them on planned actions, i.e. large scale construction projects. On the other hand, this enabled the British to shape the post-1997 reality to a point, as they continued to have a limited say in the drafting process, which was a strictly Chinese endeavour.[142] However, it also led to deadlocks, as the drafting process took several years, and the Basic Law was not to be promulgated until 1991. Afterwards, the British found it much harder to bring about constitutional changes, for example tackling the democratisation of the territory - a question bothering the British for some time now. Percy Cradock encapsulated the enormity of the problem in his book *Experiences of China*:

"Were we preserving, as in amber, Hong Kong society as it existed on 26 September 1984? Or were we allowing for development between 1984 and 1997? If so, what degree of development? It was very much in the interest of both sides that there should be a smooth transition; and there were now legal obligations in that sense."[143]

The British adherence to 'convergence' also resulted in a major blunder on the side of the Hong Kong government in 1987. When a Green Paper sought to consult the public's wishes on the pace of introducing direct elections for the legislature, it at the same time worked to dampen early hopes for the implementation of a more representative government. Despite the Green Paper's questions on democratisation having been formulated in a way to obfuscate the peoples' opinion, the support for it was unmistakeable.[144] Still, the British managed to turn the results around in such way, enabling them to declare in a

[140] Cottrell, *The End of Hong Kong*, 182.
[141] Ibid., 183.
[142] Cradock, *Experiences of China*, 217f.
[143] Ibid., 217f.
[144] 368,431 people registered their views with the Survey Office, out of which 265,078 were in favour of direct elections, 94,565 against, and 1755 with no clear preference. While the views in favour were collected through signed petitions, the views against were simply expressed through a pre-written form, which was distributed to employees, who had to sign it and send it to the Survey Office. It was then decided that each signature on a pre-written form would count as an 'individual submission', while each signature on the petitions did not. For a further elaboration, see Cottrell, 184.

subsequent 1988 White Paper that the majority of Hong Kong was against, rather than for the introduction of direct elections in 1988.

A second concept introduced was the 'through train'. With the start of the first direct election for 10 LegCo seats in 1991, the number of seats were to be extended to 15 in 1995 for the last election before the handover. Thus, the last elected LegCo under British administration would serve until 1999, "ensuring continuity through the 1997 barrier."[145]

The drafting process started off well. China's good mood was characterized by the inclusion of Martin Lee and Szeto Wah, two Hong Kong barristers who later turned into leaders of Hong Kong's pro-democracy movement.[146] In 1988 Beijing appeared lenient on many controversial points, agreeing to drop a provision, which would later re-emerge as Article 23.[147] The first draft was published in 1988 and was well received by the Hong Kong population.

All this changed with the Tiananmen Square protests in 1989. With Hong Kong showing sympathy with the student protests and providing material and monetary support before its quelling by the People's Liberation Army, the benevolent mood of the Communist Party was replaced with a harsher and less lenient demeanour. Hong Kong's support rekindled and reaffirmed Beijing's suspicions that the city would be used by foreign forces as a base for subversion, as well as sheltering the Party's political enemies.[148] The British responded to the Tiananmen crackdown with the enactment of the Hong Kong Bill of Rights Ordinance in June 1991, to protect its civil liberties.[149] Beijing's attitude towards the drafting of the Basic Law hardened afterwards, which saw the implementation of tougher provisions, among others the inclusion of Article 23.[150]

Danny Gittings remarks that much of the content of the Basic Law had already been determined in the Joint Declaration.[151] However, this did not make the drafting process easier. The last-minute introduction of 'constituted by elections' continued the tension

[145] Cradock, *Experiences of China*, 228.
[146] Gittings, *Introduction to the Hong Kong Basic Law*, 20.
[147] Article 23 of the Hong Kong Basic Law reads as follows: 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.
[148] Ip, 'Constitutional Conflict in Hong Kong Under Chinese Sovereignty', 79.
[149] Dimbleby, *The Last Governor*, 325.
[150] Bush, *Hong Kong in the Shadow of China*, 33.
[151] Gittings, *Introduction to the Hong Kong Basic Law*, 19f.

created with its implementation in the Joint Declaration. The different members of the sub-groups responsible for drafting out various sections of the Basic Law struggled to find common ground, as the vague language was open for interpretation.[152] A split between the mainland and Hong Kong drafters was already clearly visible. Many points of contention during the drafting process have remained ever-present in Hong Kong's political discourse up to nowadays: the definition of democracy, the scope and extent of universal suffrage, the limits of the 'one country, two systems' framework.[153] Cradock describes the difficulty the British had behind the scenes to convince the Chinese to include a directly elected representative government in the draft. Still shaken by the Tiananmen Square protests, they were highly suspicious of any attempts made by the British to press for more directly elected seats before the 1997 deadline. Witnessing the fall of Communist regimes all over Eastern Europe, the Chinese feared the same destabilizing political influence on the mainland with the inclusion of more democracy for Hong Kong. The concessions the British managed to agree upon with the Chinese were bilateral written agreements, not published by neither the Chinese nor the British Foreign Office.[154]

The Basic Law was adopted and promulgated at the Third Session of the Seventh National People's Congress of the PRC on 4 April 1990 and came into effect as of 1 July 1997. The Basic Law managed to transcribe the principles and policies laid out in the Joint Declaration into a constitutional binding document under Chinese Law, regulating life in the territory after 1997 for the next 50 years until 2047. Important here is the equal validity attributed to both the Joint Declaration and its annexes, enabling the detailed work implemented by the British to find its way into the text of the Basic Law.[155] It is oftentimes regarded as the de facto constitution of Hong Kong. Under it, Hong Kong was established as a Special Administrative Region (SAR) under Article 31 of the 1982 Constitution of the People's Republic of China. This grants Hong Kong a large degree of autonomy in all matters except those of defence and foreign affairs under certain conditions. Although a high degree of autonomy is at the heart of the Basic Law, this concept is nowhere defined.[156]

[152] Mark Roberti, *The Fall of Hong Kong: China's Triumph and Britain's Betrayal* (New York: J. Wiley, 1994), 305.
[153] 'Basic Law Is Conflicting, Confusing – and Still the Best Bet for Our Future', South China Morning Post, 10 April 2020, https://www.scmp.com/comment/opinion/article/3079127/hong-kongs-basic-law-may-be-conflicting-and-confusing-its-still.
[154] Dimbleby, *The Last Governor*, 144f.
[155] Gittings, *Introduction to the Hong Kong Basic Law*, 2013, 18.
[156] Ibid., 3.

The necessity for it stemmed from the policy of 'one country, two systems' envisioned by Deng Xiaoping. This enables the PRC to practice its socialist system on the one hand, while guaranteeing the continuation of Hong Kong's capitalist ways of life, by taking into consideration the city's colonial history and special circumstances.[157]

A first dichotomy in the Basic Law itself becomes visible here. Whereas the de facto constitution of Hong Kong proclaims no change and serves as a safeguard of the previous capitalist system and way of life, the pledge for the gradual implementation of universal suffrage for the executive and legislature constitutes a change thereto unexperienced. Albeit not in direct contrast with capitalism and its inherent way of life, these changes would result in a drastic change completely alien to both the political system of the PRC and different to the system of government executed under British rule. Bush mentions, that the Hong Kong which was taken as the basis for the 'one country, two systems' framework had after almost 20 years already changed fundamentally, and that it is rather time for the CCP to adapt to the new contemporary circumstances.[158]

The Hong Kong political system, as stipulated by the Basic Law, is often characterised as 'liberal authoritarianism'. This implies, that although civil liberties exist, there are restrictions on electoral processes.[159] Under Article (15) of the Basic Law, the chief executive (CE) is not elected by universal suffrage but selected by an Election Committee of 1,200 to be appointed by the central government in Beijing.[160] The majority of seats in the committee are occupied by an elite with close ties to Beijing.[161] This ensures that the election process is biased towards candidates endorsed by Beijing, as will be later shown.[162]

China describes Hong Kong's system of government as 'executive-led', a structure which is a remnant from the colonial times and which grants the chief executive most of the power.[163] For example, under Article 48(7) he can appoint and remove holders of public

[157] See the *Sino-British Joint Declaration On The Question Of Hong Kong*.
[158] Bush, *Hong Kong in the Shadow of China*, 209.
[159] Stephan Ortmann, 'The lack of sovereignty, the Umbrella Movement, and democratisation in Hong Kong', *Asia Pacific Law Review*, Vol. 24 No.2, 1016, 110. https://doi.org/10.1080/10192557.2016.1242930
[160] See *Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region*: this amendment increased the CE Election Committee form 800 to 1200, which still means that ultimately out of 7,511 Million inhabitants (2020), only 0.02 percent of the population vote for their city's representative.
[161] Ortmann, 'The lack of sovereignty, the Umbrella Movement, and democratisation in Hong Kong', 120.
[162] In 2017 for example, Chief Executive Carri Lam was elected with 777 out of 1194 votes.
[163] Gittings, *Introduction to the Hong Kong Basic Law*, 4.

offices and the power of policy formulation is exclusive to the CE (Article 48(4) and 62(1)). By reserving the right to ultimately appoint the chief executive and potentially screen out any unwanted candidates, with 'patriotism' and 'loyalty' as prerequisites, Beijing thus holds considerable control over the HKSAR's government.

The small-circle election process of the CE, the sweeping powers, and the accountability towards Beijing rather than to the people of Hong Kong lead to a doubtful legitimacy and to low ratings of popularity. According to Gittings, these low ratings show the importance of election by universal suffrage.[164]

In contrast to the chief executive is the Legislative Council, which enjoys a higher degree of legitimacy due to partial universal suffrage. Half of its members are directly elected through geographical constituencies. The other half is returned through functional constituencies (FC), which represent different sectors of the community, ranging from barristers, business communities to education and professionals. [165] The importance of these FCs will be discussed further down. The LegCo has the ability to curtail the CE's power a bit, through blocking legislation or initiating hearings on government policy.

Although a high degree of autonomy is promised to the Hong Kong SAR, ultimately, as stipulated in Article 12, Hong Kong remains as local administrative region of the PRC and is directly under the Central People's Government. This indicates that the degree of autonomy granted to Hong Kong is ultimately dependant on the Central Leadership's authorization.

Furthermore, he Standing Committee of the NPC reserves the right to rebuff any law enacted by the Hong Kong legislature if deemed incompatible with the Basic Law or running contrary to the relationship between the SAR and the central government (Article 17). A law returned this way shall be immediately invalidated. Therefore, the Standing Committee of the National People's Congress reserves the ultimate right to decide whether or not a law serves its interest in Hong Kong or not. The rights to act in this way are, according to Article 18 of the Basic Law confined only to Hong Kong's mattes regarding defence and foreign affairs. However, once again, the boundaries here are extremely vague.

[164] Ibid., 108.
[165] While there are five geographical constituencies (Hong Kong Island, Kowloon West, Kowloon East, New Territories West, New Territories East), there are 29 functional constituencies.

Another example of a grey zone would be a violation of Article 1. This article in Chapter 1: General Principles clearly states that, "The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China." At the same time, Hong Kong is granted its autonomy and to continue with its capitalist system. Therefore, any calls for more drastic reforms or even independence will not just be ill-perceived by the Chinese Communist Party, but also contravene against the principles of the Joint Declaration and the Basic Law.

One major issue regarding the Basic Law of Hong Kong is its status in context with the Chinese Constitution and its interpretation. In his book *Introduction to Hong Kong Basic Law,* Danny Gittings provides some clarity on these matters. Gittings defines three dimensions of the Hong Kong Basic Law: international, domestic, and constitutional and continues to lay out the intricate relationship this particular Basic Law has with the PRC's constitution.[166] For this thesis, the domestic aspect holds the most importance.

According to Gittings, the domestic aspect of the Basic Law is derived from its status as a national law, binding to both Hong Kong but also the rest of the country.[167] Chapter II of the Basic Law, *Relationship Between the Central Authorities and the Hong Kong Special Administrative Region*" is devoted in its entirety to this relationship. It encompasses the powers of the central authorities over Hong Kong, as well as their restrictions. It is noted here, that the Hong Kong Basic Law is one among over 60 basic laws.[168] It's status as Basic Law and the fact that it was enacted by the NPC carry a great significance though, ranking it just below the PRC's constitution and above all other forms of legislation enacted by the capable bodies in China.[169] Although the Hong Kong Basic Law trumps other pieces of national legislation, its relationship with other basic laws is not as easily discernible. There have been cases where Hong Kong citizens have been tried and convicted under PRC Criminal Law, which is not listed in Annex III of the HK Basic Law.[170] The difficulty here are the provisions of the PRC Criminal Law, which allow the mainland court's jurisdiction over crimes that have 'consequences' on the mainland.[171]

[166] Gittings, *Introduction to the Hong Kong Basic Law*, 37ff.
[167] Ibid., 40ff.
[168] Gittings, *Introduction to the Hong Kong Basic Law*, 42.
[169] Gittings notes that these are Articles 78 and 79 of the PRC Legislation Law, passed in 2000.
[170] Annex III contains National Laws to be Applied in the Hong Kong Special Administrative Region
[171] For a more detailed analysis, see Gittings 44.

Beijing is able to exploit this vagueness in terms and language to construct cases in which a connection to the mainland can be established, resulting for example in the abduction of HK booksellers, not only violating the judicial autonomy of the Hong Kong SAR but also the Convention on Civic and Political Rights which is applicable in Hong Kong and part its legislative framework. Although there exists some reasoning that Hong Kong's Basic Law should safeguard Hong Kong's special situation, the case was made that the booksellers' actions had an impact on the mainland's population. [172]

Although the Basic Law enshrines Hong Kong's civil liberties, provides the framework for the continuation of its capitalist economy, and promises eventual universal suffrage, it becomes obvious at a closer look that Beijing has infused it with many opportunities to keep control and to exploit its vague formulations and definitions to its advantage.

## III.III. Hong Kong's Last Governor – Christopher Patten

The last years of Hong Kong under British rule were heralded with the arrival of Chris Patten, Hong Kong's last governor. What put Patten apart from his previous colleagues was that he was not a diplomat assuming the mantle of governor, but a politician who was well versed in establishing a public appearance and dealing with both critics in Beijing and at home. Patten himself writes, "With a former Cabinet minister as governor, policy was clearly more likely to be initiated in Hong Kong than London or Peking."[173]

Dimbleby outlines the three tasks Patten had to meet during the last five years of British rule over Hong Kong:

> Firstly, he was to negotiate the final stages of the transfer of sovereignty over Hong Kong from Britain to China. Secondly, he had to prepare the people of the colony to face the uncertainties enshrined in that prospect. Thirdly, he had to convince public opinion in the United Kingdom an internationally that Britain's withdrawal from Hong Kong had been accomplished with at least a modicum of dignity and honour.[174]

[172] In 2015, five Hong Kong book publishers located at Causeway Bay went missing, only to reappear in custody of mainland Chinese authorities. All of them were selling books, that were regarded as a critique on President Xi Jinping.
[173] Patten, *East and West*, 15.
[174] Dimbleby, *The Last Governor*, XIV.

Percy Cradock labels the arrival of Christopher Patten as the end of cooperation between Britain and China.[175] This end came, when Governor Patten announced in his first major policy speech in 1992 his visions to broaden the legislative base for the 1995 LegCo elections.[176] The reason for this was the 1989 crackdown on student protests in Beijing and the desire for Britain to not leave Hong Kong with the impression, that it would be worse off after 1997 than it had been under colonial rule. Rather, the desire was, that it had done everything in its power to leave behind a stable system of governance, guaranteeing further stability and prosperity. A quicker pace of democratisation was therefore envisioned under Chris Patten, stemming also from a feeling of guilt for having failed to introduce electoral reforms earlier in Hong Kong's history.[177] The governor sought to find 'elbowroom' within the framework of the Joint Declaration and the Basic Law to implement his reforms.[178] With the above mentioned speech on 7 October 1992 Patten outlined the changes he envisioned.[179]

Intrigued by the civil liberties the people of Hong Kong were enjoying and appalled that Britain so far had done so little to enfranchise the people with a system of democracy, Chris Patten sought to exploit a loophole in the Basic Law and broaden the voter base within the functional constituencies.[180] Virtually every Hong Kong citizen would have had the right to vote under the Patten proposals. The PRC government strongly objected to his proposals, voicing its dissatisfaction of the British side having broken the spirit of the Joint Declaration, and furthermore, the Basic Law. In hindsight a deal had been reached between Cradock and Beijing through unofficial correspondences over the rate of introduction of directly elected seats to the LegCo and the composition of the CE Election Committee.[181] When asked by Patten to point out the exact provisions he had violated, he received no clear answer.[182]

After 17 rounds of negotiations with no agreement of substance to show for, Patten went ahead and unilaterally put his proposals before the LegCo. Afterwards the negotiations came to an end in 1993 and the 'through train' derailed, meaning that the Chinese

[175] Cradock, *Experiences of China*, 247.
[176] Cottrell, *The End of Hong Kong*, 192.
[177] Cradock, *Experiences of China*, 248.
[178] Dimbleby, *The Last Governor*, 109.
[179] Patten took advantage of the lack of any definition of the functional constituencies. He added nine additional ones, enfranchising a voter electorate of 2.7 million.
[180] Gittings, *Introduction to the Hong Kong Basic Law*, 37.
[181] Dimbleby, *The Last Governor*, 144.
[182] The Chinese answer regarding Patten's "violations", was that he had violated the Joint Declaration and the Basic Law "in spirit". The Chinese failed to point out specific provisions that Patten had transgressed.

would not accept the 1995 – mostly pro-democratic - elected legislators and replace them with a LegCo of their own.[183] Patten's confrontational stance led, like Thatcher's behaviour during the Joint Declaration negotiations, to a breakdown of the talks. The LegCo passed the Patten proposals in early and mid-1994.[184] The introduction of universal suffrage failed though. In the ensuing 1995 LegCo election, the pro-democracy camp took away its largest victory.[185]

After the 'through train' had derailed, Beijing prepared for the 1997 transition on its own by building a 'second kitchen'.[186] For this, they set up a Preparatory Committee in 1996. The Preparatory Committee was responsible to create a Selection Committee, which in turn had the task to select the firs chief executive and the members of China's Provisional Legislative Council. The latter was to replace the LegCo returned after the 1995 elections. Additionally, the Provisional Legislative Council reverted almost all of Patten's reforms.

The Preparatory Working Committee nominated and elected the first Chief Executive, Tung Chee-hwa, who in turn nominated his own LegCo – amongst its members many could be found who lost out in the 1995 election. Dimbleby describes the election campaign for the interim Chief Executive as a charade.[187] Despite the outcome having been already decided, all candidates undertook extensive publicity work, mimicking a proper competitive election. All approved by the Central Leadership in Beijing, this new shadow administration immediately started to prepare for the time after 1997.

Chris Pattens arrival and way of dealing with things constituted a breach from the previous policy of consultation, cooperation, and convergence practiced under Sir Percy Cradock. Patten's drive to quicken the pace of democratisation, even unilaterally when necessary, upset both the Chinese in Beijing, as well as the sinologists back in London. Interestingly, this only proved Cradock's First Law of Diplomacy – during negotiations one should worry more about one's own side than the opposition.[188] His confrontational style in combination with his public appearances led to a series of political and systemic

[183] Dimbleby, *The Last Governor*, 234f.
[184] The reforms in question were the Electoral Provisions (Miscellaneous Amendments (No. 2) Bill 1993 and the Legislative Council (Electoral Provisions) (Amendment) Bill 1994.
[185] The 1995 Hong Kong Legislative Council election was the first election, where the legislative was full elected. Out of the total 60 seats at that time, the pro-democracy camp returned 29 through direct elections, whereby 16 came from the GCs and 10 from the FC.
[186] Cradock, *Experiences of China*, 253.
[187] Dimbleby, *The Last Governor*, 373.
[188] Cradock, *Experiences of China*, 196.

changes for Hong Kong on the one hand: under his tenure Hong Kong experienced its first large-scale election in 1995; a fully legitimate LegCo was set up, which was a slap in the face for Beijing, with the Hong Kong citizens showing their disregard for the pro-mainland candidates so openly.

On the other hand, Patten's confrontational stance and violation of the principle of convergence had earned him the scorn of Beijing and London alike, ultimately leading to a breakdown in the final negotiations of Hong Kong's future, and prompting the Chinese to reverse his reforms and implement their own post 1997. Despite the eventual reversal of the electoral system, Patten's reform significantly impacted the Hong Kong political landscape by polarising Hong Kong politics.[189]

Another faction which largely opposed Patten and his reforms was the business elite. Convinced that more democracy would lead to Hong Kong becoming a sort of welfare society, coupled with increased taxes and diminished wealth for them. Drilled towards business and profits, the worried business elite found an open ear with the leadership in Beijing. Keen on preserving the 'prosperity and stability' of Hong Kong after 1997 and maintaining the influx of money into the mainland, Beijing saw fit to cater to the business elites' wishes. The exact impact of the Hong Kong's elite impact on democratic reform will be dealt with later on.

Patten's five years as governor of Hong Kong show parallels to Cradock's efforts to reach an agreement with the Chinese during the Joint Declaration negotiations, while at the same being starkly different. Both sought to achieve the best possible outcome for Hong Kong, however they approached the matter from two totally different angles. Cradock described himself as a realist and followed a policy of orderly retreat as outlined above, always probing at the Chinese limits but never overstepping them. He thought he knew that to raise their ire would amount to nothing more than a worse situation for Hong Kong post 1997.

Patten on the other hand took an idealistic stance. He sought to provide the residents of Hong Kong with the best possible protection after 1997 he had to offer. He declared his principles and red lines from the outset and refused to retreat behind them, which was something the Chinese were not used to from the previous negotiations with the British.

[189] Dimbleby, *The Last Governor*, 434.

Patten managed to implement some of his reforms, only for most of them to be reversed after the handover. This prompted a verbal attack by Cradock, who saw himself confirmed in his view that the limits of the Chinese had been adequately probed during the negotiations for the Joint Declaration. He accused Patten of raising false hopes in the people of Hong Kong, establishing a construct of direct elections and representative government only for it to be crushed after 1997.[190] Furthermore, according to Cradock, Patten's course of action had only proven Beijing's suspicions of Britain's intent to set Hong Kong on the path of self-determination and independency.[191]

## III.IV. Post-1997 Democratic Development and Reform

Hong Kong was handed back to the PRC on 1 July 1997. The next day, the Asian financial crisis began and put the newly created SAR under considerable economic stress. The new government under Hong Kong's first chief executive, Tung Chee-hwa struggled to respond and imposed an austerity program at a time when it initially planned to boost the economy. In addition to the precarious economic situation, Hong Kong was severely hit by the acute respiratory syndrome (SARS) outbreak. A slow and hampered response by its government resulted in plummeting opinion polls, with only 16 percent of Hong Kong's residents being satisfied in December 2003.[192]

A stimulus package provided by China helped Hong Kong's economy to grow again, hand-in-hand with the SAR's population. The economic development and population growth resulted in massive wealth gaps, turning Hong Kong into one of the most expensive cities world-wide. Meanwhile, China caught up to Hong Kong's economic lead. The neighbouring Pearl-River Delta region experienced a massive development, with many manufacturing firms moving to the mainland. Hong Kong diversified its economy once more in the process, turning towards financial services, tourism, and retail. Nowadays the HKSAR accounts only for roughly 2-3% of China's GDP, whereas during its peak in the mid-90s under the governorship of Patten it contributed as much as 30%, despite the strained relations with the mainland.[193]

In the sphere of democratisation and political reforms, Beijing started to dictate the pace and extent of change. Showing leniency again, after the 2003 and 2012 unrests,

[190] Dimbleby, 414.
[191] Cradock, *Experiences of China*, 254.
[192] Bush, *Hong Kong in the Shadow of China*, 15.
[193] Patten, *East and West*, 47.

Beijing stopped budging after the 2014 Umbrella Movement, and from then on only hardening its stance.

**2003 - Article 23 Protests and their Aftermath**

Bush claims, that the Hong Kong government tried to implement a National Security Bill as required under Article 23 of the Basic Law in 2003 under pressure from Beijing and as a response to its financial aid during the Asian financial crisis.[194] Under it, comprehensive laws were to be enacted protecting national security. However, Hong Kong residents feared an encroachment on their civic freedoms by Beijing and the territory saw its first large scale protests since the handover. Despite several revisions during the legislative process to placate the protesters, the bill's critics were not appeased. On 1 July 2003 more than half a million people emerged on the streets, and legislators who had been positive about the bill withdrew their support. Lacking enough support in the LegCo, the government had to shelve the bill indefinitely, practically withdrawing it.[195] Additionally, the unpopular Chief Executive Tung Che-hwa resigned before the end of his term, declaring health reasons as the cause. However, many speculate that he had lost the favour of Beijing by then and was encouraged to resign.

Gittings sees Article 23 ambivalently. He acknowledges the perception of Hong Kong's residents that its enactment would have restricted their autonomy. At the same time, he underlines the extent to which Hong Kong was gifted with law making powers under the Basic Law, allowing its government to enact its own law on such a sensitive issue.[196] Gittings further notices that the 2003 protests "marked a watershed moment for the Hong Kong SAR, after which Beijing began to lessen its self-restraint noticeably."[197] This became evident in 2004, when the National People's Congress' Standing Committee interpreted the Annexes I and II of the Hong Kong Basic Law in such a way, which gave Beijing total control over any changes to Hong Kong's electoral system.[198] The criteria for democratisation were to be reinterpreted by the NPSC 'in light of the actual situation' and 'through

[194] Bush, *Hong Kong in the Shadow of China*, 15.
[195] Gittings, *Introduction to the Hong Kong Basic Law*, 106.
[196] Gittings, *Introduction to the Hong Kong Basic Law*, 73.
[197] Ibid., 69.
[198] Jie Cheng, "The Story of a New Policy", *Hong Kong Journal*, Vol. 15, July 2009. Accessed under: http://www.hkbasiclaw.com/Hong%20Kong%20Journal/Cheng%20Jie%20article.htm

gradual and orderly progress'.[199] This reaction from the mainland can also be linked to the landslide victory in the GCs for the pan-democrats[200] in the 2004 LegCo elections. Chen describes this move by Beijing as "the most significant intervention on Hong Kong affairs since the establishment of the HKSAR".[201] According to Sing, the unprecedented support for the pro-democracy parties during the local elections, in combination with the largest unrests post-1997, reminded Beijing of 1989's Tiananmen scenario: the gathering of different strata of society to protest against the government and call for the implementation of democracy evoked the feeling of loss of control.[202] Its response was to clamp down on the protesters and dampen the local-democracy movement on the one hand and try to shift the local attention with an assortment of economic packages to boost Hong Kong's economy on the other. However, the doggedness with which the Hong Kong democrats called for political reform show that despite economic stimulus, the Beijing had failed to understand Hong Kong's, who were not politically apathetic and only interested in economic gain. Labelling democrats and their demands for universal suffrage as "unpatriotic" and unqualified to govern Hong Kong, Beijing replied in 2004 with its right of interpretation of the Basic Law through the NPC Standing Committee, governing the method for selecting the Chief Executive and the Legislative Council after 2007.[203]

In 2007, the NPC continued to tighten its grip around the electoral reforms in Hong Kong. Although the next chief executive elections were planned to take place in 2012, it was announced that there would be no shift towards universal suffrage, and that the functional constituency share of the LegCo seats would stay at 50 percent. However, the NPC also stated that the CE "may" be chosen through the means of universal suffrage in 2017,

[199] See: The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

[200] Hong Kong's pro-democracy politicians are known as 'pan-democrats', due to the fact that the various democratic parties often work together. In the Legislative Council they face the 'pro-China' or 'pro-Establishment' legislators.

[201] Albert Chen, "The Development of Representative Government in Hong Kong", in Chan and Lim (eds.), *Law of the Hong Kong Constitution*, 234.

[202] Ming Sing, 'The Legitimacy Problem and Democratic Reform in Hong Kong', *Journal of Contemporary China* 15, no. 48 (August 2006): 517, https://doi.org/10.1080/10670560600736558.

[203] The Basic Law interpretation imposed additional requirements on Annex I and Annex II. Should the 'need to amend' arise, any amendments of the Basic Law must be ratified by 'a two-thirds majority of all the members of the Legislative Council […] with […] the consent of the Chief Executive. See footnote 194, as well as Bush, *Hong Kong in the Shadow of China*, 39ff for a more detailed account.

as well as the next LegCo after that.[204] The implementation of any kind of progress regarding universal suffrage was thus postponed by another decade.

In 2009, the Hong Kong government proposed the introduction of ten new seats to the LegCo, adding five to the already existing geographical constituencies. The remaining five would form a new functional constituency, namely District Council (Second). This meant, that local district council members, of whom some were returned through popular vote, would pick individuals for these five seats.

What had changed in the meantime was the political climate in Hong Kong. This became evident through a split in the pro-democracy camp, which Bush sees as a weakness.[205] While members of the Democratic Party remained moderate, parties like the League of Social Democrats and the Civic Party radicalized. Members of the latter forced a by-election in 2010, by resigning from the LegCo.[206] Labelling this by-election a "referendum on the Hong Kong SAR's political order on how leaders were selected", the group attracted the ire of Beijing, which alleged that Hong Kong was set on the path of independence once more.[207]

The moderate democrats on the other hand were ready to negotiate with Beijing, which accepted their proposal that the new five District Council (Second) seats should be elected, instead of selected, by over 3 million voters who were not represented in any other functional constituency, thus enfranchising even more Hong Kong citizens than the Patten reforms had sought to. Although the deal ensured that now 40 out of 70 LegCo seats were popularly elected (35 geographical constituencies + 5 District Council (Second) seats), Hong Kong scholars note that this came at a great cost. Ma Ngok states that the moderate democrats negotiations with Beijing was seen as a 'betrayal' by other pro-democracy groups.[208] A "transition fatigue" had spread among Hong Kong's democracy advocates. According to him, "The lack of progress toward democracy left Hong Kong's democrats dispirited and frustrated."[209] This deep-seated frustration would unload during the 2014

[204] Bush, *Hong Kong in the Shadow of China*, 41.
[205] Ibid., 153.
[206] Five pan-democrat legislators decided to resign from the five GC, thereby forcing a territory-wide GC election. Should they be returned to the LegCo, they would have seen this as a de facto endorsement on their aims for the abolition of the FCs and a real political reform.
[207] Bush, *Hong Kong in the Shadow of China*, 41.
[208] Ma Ngok, Negotiating Democracy and 'High Autonomy': the 2010 Political Reform, 2013, 261-62; Ray Yep, ed., *Negotiating Autonomy in Greater China: Hong Kong and Its Sovereign before and after 1997*, Governance in Asia Series 2 (Kopenhagen: NIAS, 2013).
[209] Bush, *Hong Kong in the Shadow of China*, 43.

Umbrella Movement and would lead to its escalation, as the protesters realized, that peaceful means led to no results.[210] Furthermore, the fragmentation of the pan-democrats would hamper any negotiations and potential compromise with Beijing on electoral reforms in the future. However, in 2003 Hong Kong had for the first time learned to politically mobilize and stand up to Beijing.[211]

**2012 - Protests Against 'Moral and National Education'**

Hong Kong saw its next major protest movement, when the Hong Kong government tried to introduce a national education reform demanded by Beijing in 2012, linking Hong Kong's educational system closer to that of the mainland, where the Communist Party is glorified, and 4 June 1989 downplayed or outright omitted. However, that was not the first time Beijing attempted to have a say in Hong Kong's curriculum. In March 1997, Beijing announced through Patten's successor Tung Che-hwa, that textbooks would have to be rewritten after the handover, to be in line with the 'one country, two systems' policy.[212] The effort by the authorities and Beijing to win over the younger generations was seen as an attempt at brainwashing by the students, parents and teachers. Rejecting the idea, Hong Kong's residents once again took to the streets, expressing their discontent with the government's actions.

Controversially, the intention to alter the SAR's curriculum and win over its younger generations resulted in the politicisation of young students, something the Central Government would have liked to avoid. Then 15-year-old Joshua Wong formed a group called Scholarism with like-minded students to fight the government's proposal and became a prominent figure in Hong Kong's pro-democracy movement.[213]

In the end, 90.000 people protested against the government's initiative, leading to the occupation of the forecourt of the government headquarters for several months. In September 2012, Chief Executive Leung Chun-ying gave schools the choice whether or not to implement the new curriculum, rendering it effectively dead.[214]

[210] Lauren Higgers, "Beijing Switches Sides in the Race for Hong Kong's Chief Executive," *New York Times*, 22 March 2012. www.nytimes.com/2012/03/22/world/asia/beijing-switches-support-in-race-for-hong-kong-chief.html
[211] Bush, *Hong Kong in the Shadow of China*, 39.
[212] Dimbleby, *The Last Governor*, 418.
[213] Bush, *Hong Kong in the Shadow of China*, 94.
[214] Ibid., 94.

**2014 - The Umbrella Movement**

2014's Umbrella Movement was sparked by a reform of the chief executive and LegCo election processes. On 31 August 2014 the NPC Standing Committee declared that universal suffrage to elect the chief executive in 2017 would be granted to all Hong Kong residents in accordance with the Basic Law.[215] Should the first election under universal suffrage prove successful, plans to extend the principle to the election of the LegCo would be considered. However, voters would have been only allowed to select from a list of candidates first nominated and then pre-vetted by Beijing. Calls for genuine democracy and universal suffrage were issued by pro-democracy activists and politicians, and people took to the streets once again to express their discontent.[216] In their eyes, the NPC's decision failed to conform to international standards on genuine universal suffrage, 'as they believed that only persons approved or considered acceptable by the Chinese government would be nominated as candidates under the electoral model stipulated[…].'"[217] Furthermore, Article 45 of the Basic Law states that candidates standing for the Chief Executive election by universal suffrage have to "be nominated by a broadly representative nominating committee in accordance with democratic procedures." Pan-democrats saw these nomination procedures and screening mechanism as very restrictive. For them, 'genuine' universal suffrage consist of competitive elections, during which candidates with different agendas and political opinions freely compete for votes.[218] According to Chen, the pan-democrats have always obtained the majority of popular votes for LegCo seats in the geographical constituencies. Therefore, "they believed that any nomination system for the election of the CE by universal suffrage which makes it impossible for their leaders to be nominated as candidates would not be genuine universal suffrage."[219]

The protests escalated in clashes with the police, when young protesters occupied streets in the government and financial districts. The occupation of Hong Kong's districts lasted 79 days in total, from September to December. Ensuing escalating police brutality won over the support of the public for the protesters' cause. The movement got its name, from the umbrellas employed by the protesters to fend of tear gas and pepper spray used by the police forces.

[215] Albert H.Y. Chen, 'The Law and Politics of the Struggle for Universal Suffrage in Hong Kong, 2013–15', *Asian Journal of Law and Society* 3, no. 1 (May 2016): 190, https://doi.org/10.1017/als.2015.21.
[216] Syaru Shirley Lin, 'Analyzing the Relationship between Identity and Democratization in Taiwan and Hong Kong in the Shadow of China', n.d., 28.
[217] Ip, 'Constitutional Conflict in Hong Kong Under Chinese Sovereignty', 89.
[218] Chen, 'The Law and Politics of the Struggle for Universal Suffrage in Hong Kong, 2013–15', 190.
[219] Ibid., 198.

In the end, the protest movement ebbed away. The protesters failed to maintain the support of the public, which was affected by the traffic jams and the disruptions of small businesses and daily life.[220] Nevertheless, the further consultation exercises on the electoral model proposed by the Hong Kong government, based on the NPC Standing Committee's decision, were boycotted and ultimately vetoed by the LegCo in June 2015.[221]

For the first time after the handover, the government in Beijing did not budge and did not offer any concessions to the protesters. Li Fei, Chairman of the Hong Kong Basic Law Committee of the NPC Standing Committee, said at a meeting on 31 May 2015 with Hong Kong Legislative Councillors that, "[t]here is no possibility for the top legislature to revise the decision without even putting it into practice." [222] Following the LegCo's veto in June, the spokesman of the General Office of the NPCSC announced that, "the orientation of the system of universal suffrage and the legal principles prescribed by the NPCSC Decision must continue to be followed in the process of promoting the election of the CE by universal suffrage; any future implementation of universal suffrage for the election of the CE in Hong Kong must still rely on this Decision as the constitutional basis for universal suffrage."[223]

This symbolized a further hardening of the Central Leadership's attitude towards the SAR. Bush notes that, "neither side had achieved its real objective: for government supporters, passage of the plan; for the democrats, a system without screening of candidates. […] 'All parties involved contributed to the death of the universal suffrage babe in arms before it could leave the crib, let alone grow into a sturdy teenager'."[224] He goes on to state, that the reforms ultimately failed because of mistrust and suspicion on both sides.[225]

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[220] Ip, 'Constitutional Conflict in Hong Kong Under Chinese Sovereignty', 92.

[221] Chen, 'The Law and Politics of the Struggle for Universal Suffrage in Hong Kong, 2013–15', 198. The reform package was ultimately rejected, because the pro-Beijing camp mistakenly walked out of the LegCo chamber, in an effort to postpone the final vote and sway it in their favour. Without them knowing, the voting process commenced, and due to their absence, the pan-democrats were successful in vetoing the proposal.

[222] Kahon Chan, "NPCSC Decision Stays Effective beyond 2017: Li Fei," *China Daily* (Hong Kong edition), 1 June 2015. https://www.chinadailyasia.com/hknews/2015-06/01/content_15270581.html

[223] : See various Hong Kong newspapers of 19 June 2015; Liaison Office of the Central People's Government in Hong Kong SAR (2015), "香港特區行政長官普選法案因少數議員阻撓未獲通過. http://www.gov.cn/xinwen/2015-06/18/content_2881580.htm

[224] Bush, *Hong Kong in the Shadow of China*, 143.

[225] Ibid., 278f. It has to be noted however, that Bush provides additional explanations, why the 2014 reforms failed, such as socio-economic reasons, i.e. soaring property prices and income inequality. Additionally, the mere introduction of competitive elections alone, which he regards as a key missing element of Hong Kong's democratisation, is not enough according to him. Hong Kong's political system would need

**2020 – The Water Revolution**

According to Eric Ip, Hong Kong's electoral reform process is since 2014 in a stalemate. He was furthermore right, when he mentioned in *Constitutional Conflict in Hong Kong Under Chinese Sovereignty* that, "even a minor miscalculation by Hong Kong's ruling elite could trigger a second Umbrella Revolution led by protestors all too familiar with arrests, tear gas, beatings, and pepper spray and now inured to them."[226]

Hong Kong's 2020 Water Revolution[227] was triggered by the government's decision to amend the Fugitive Offenders Ordinance in response to the Chan Tong-kai case. Chan was accused to murdering his girlfriend in Taiwan, but no extradition to stand trial in Taiwan was allowed under Hong Kong law. Reaching an extradition agreement with Taiwan would have meant that Hong Kong had to reach one with the mainland as well, since the CCP regards Taiwan as a renegade province. The planned amendment resulted in roughly two million citizens, almost a third of Hong Kong's entire population, taking to the streets. Their perception was, that the planned amendment bill would lead to a collapse of the firewall between Hong Kong and the mainland, protecting the former from being extradited and facing unjust trials in the latter. An extradition agreement with mainland China would have allowed the authorities there to also prosecute residents of or visitors to Hong Kong for political reasons. The protest movement managed to attract supporters from all walks of life, however, the majority was made up of the younger generations of Hong Kong.

In response to the largest demonstrations so far on Hong Kong's territory, the Hong Kong government suspended the extradition bill. By then it was too late however, since the protesters had moved away from solely demanding a suspension of the bill to call for the implementation of universal suffrage.[228] The ongoing protests saw clashes with the police on a level surpassing even the 2014 protests, and led to a downward spiral of violence among both the police and the protesters. The city appeared to be in a deadlock by early

more far-reaching changes, such as transforming the LegCo in a more representative institution, endowing a political opposition party with a platform to speak unhindered.

[226] Ip, 'Constitutional Conflict in Hong Kong Under Chinese Sovereignty', 94.

[227] The Water Revolution had its name inspired by actor and martial arts artist Bruce Lee, who said in an interview: "Empty your mind, be formless, shapeless – like water. […] Water can flow, or it can crush." The 2019 protesters adopted this tactic, staging impromptu demonstrations and successfully evading the police forces on many occasions.

[228] The Five Demands raised by the protesters were: 1) The full withdrawal of the extradition bill; 2) A commission of inquiry into alleged police brutality; 3) Retracting the classification of protesters as 'rioters' [Peaceful protesters were labelled as 'rioters' early on. This crime is punishable by up to 10 years in prison according to Hong Kong law.]

2020, when neither the protesters were willing to back off, nor did the Hong Kong government showed any readiness to engage in constructive talks or give in to the protesters' demands. Although Beijing denounced the movement, attaching the label of foreign influence to it, it remained restrained and did not interfere.[229]

The protest movement was dampened down by the outbreak of the Covid-19 pandemic when the Hong Kong authorities used social distancing regulations as a reason to forbid gatherings. Surprisingly, Beijing enacted its own *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* in July, also known as the National Security Law, bypassing the Hong Kong legislature under Article 18(4) of the Basic Law.[230] With its implementation, the CCP leadership relieved Hong Kong of its duty to draft its own national security law, as stipulated in Article 23 of the Basic Law. Additionally, it finalized a process that had commenced with the drafting of said law. Dimbleby describes, how the British managed to protect Hong Kong's fright of assembly and free speech with the 1991 Hong Kong Bill of Rights. In an additional 1991 Crime Bill, enacted in 1991, the concept of subversion had been defined in a way that it only became applicable unless a person's 'intention of overthrowing the government involved the use of force.'[231] The new security law allows the Central Government to undermine Hong Kong's civil liberties, such as freedom of assembly and speech, the right to stand for election or create a political party. For example, one provision in the national security law criminalizes "inciting hatred of the Central People's Government."[232] Herby, as observable with the Basic Law, the wording is purposefully kept vague so as to cover as much jurisdictional space as possible. Under this provision, democratic parties advocating for freedom and speaking out against Beijing could be punished. In some cases, the prosecuted might be taken to the mainland and stand trial before Chinese courts, which are

[229] See for example Steven Lee Myers, "In Hong Kong Protests, China Angrily Connects Dots Back to U.S.", *The New York Times*, 5 September 2019. https://www.nytimes.com/2019/09/05/world/asia/china-hong-kong-protests.html.; or John Sudworth, "Hong Kong protests test Beijing's 'foreign meddling' narrative", *BBC News*, 15 December 2019. https://www.bbc.com/news/world-asia-china-50753963

[230] Article 18(4) reads as follows: 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. The NPC has used the narrative of turmoil in 2020 when it enacted its National Security Law for Hong Kong.

[231] Dimbleby, *The Last Governor*, 382.

[232] Article 29 (5) states: A person […] shall be guilty of an offence: [if] provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Government of the Region, which is likely to cause serious consequences. Note here the vague definition of 'serious consequences', as well as the term 'unlawful means': It is unclear, whether there exist lawful means to provoke hatred towards the Central People's Government.

known for their show trials and forced confessions.[233] Furthermore, under Article 38 of the new law, the Communist Party is now able to target its critics worldwide.[234]

Its provisions prompted many pro-democracy activists to disband their respective parties or to flee the city altogether.[235] Those who remained faced arrests for participating in the 2019 protests, such as Martin Lee, or Jimmy Lai[236], for alleged collusion with foreign forces. The CCP crackdown on Hong Kong's democrats in 2020 provokes echoes of the 1989 student protests in Beijing and their quelling by the Central Government.

Interestingly, the 2020 National Security Law following the 2019 Water Revolution had the unexpected effect to right one wrong of Britain's legacy in Hong Kong. Under the Crown Colony system, the citizens of Hong Kong were technically British subjects. However, Cottrell describes that, "British governments had by the late 1970s acquired an almost neurotic fear of […] 'non-white' immigration into Britain."[237] Aware that any instability in Hong Kong might result in exactly that, the British limited Hong Kong passport holders of their legal right to settle in Britain through the 1962 Commonwealth Immigrant Act.[238] This disregard continued in 1981, when under the Nationality Act, Hong Kong's inhabitants were degraded from Citizens of the United Kingdom and Colonies to British Dependent Territories Citizens, rending them to second class citizens.[239] They would be free to enter the United Kingdom without a visa, but were denied the right to settle there.[240]

With the events of 1989 unfolding, the desire of many Hong Kongers to seek for abode in Britain grew. Although Cradock had championed the accommodation of Hong Kong's wishes in that matter, arguing that a generous response on the British side would serve as a mechanism of security and prompt many in Hong Kong to remain in Hong Kong, the British government decided otherwise. In 1990, out of 3.25 million Hong Kong British

[233] See for example Christian Sorace, "Extracting Affect: Televised Cadre Confessions in China", *Public Culture*, Vol. 31 (1), 2019, 145-171.
[234] Article 38: This Law shall apply to offences under this Law committed against the Hong Kong Special Administration Region from outside the Region by a person who is not a permanent resident of the Region.
[235] See Lok-kei Sum, "Hong Kong national security law: future of city's localist movement hangs in balance as groups disband, activists quit or flee city", *South China Morning Post*, 30 June 2020. https://www.scmp.com/news/hong-kong/politics/article/3091183/hong-kong-national-security-law-future-citys-localist
[236] Jimmy Lai is a Shanghai refugee, wo arrived in Hong Kong in 1960. He is an entrepreneur, publisher of Apple Daily and supporter of the pro-democracy movement.
[237] Cottrell, *The End of Hong Kong*, 48.
[238] Ibid., 48.
[239] Cradock, *Experiences of China*, 233f.
[240] Dimbleby, *The Last Governor*, 64.

passport holders, only 50,000 households (up to 225,000 people) were provided with full British passports. This right of abode was granted only to key groups in the business and economics sectors, with the aim of keeping them in Hong Kong, to ensure the continuation of essential services.[241] The Chinese directly retaliated by inserting Article 67 in the Basic Law, whereby "no more than 20 percent of the membership of the legislature could hold foreign nationality."[242]

Governor Patten managed to get visa-free access for the future holders of the SAR passports, who thus enjoyed the same rights as British National (Overseas) passport holders.[243]

When in 1997, shortly before the handover, Prime Minister John Major announced to the people of Hong Kong, that "Britain would watch closely what happened in Hong Kong after 1997; […] that no future prime ministers, within the limits of their power and influence, would merely look on", few would have thought, that after 23 years and several encroachments on the liberties and freedoms of Hong Kong, Prime Minister Boris Johnson would heed this words.[244] Whereas the Tory government under Thatcher (1979-1990) undertook measures to prevent and limit immigration from Hong Kong, the Tory government under Premier Boris Johnson opened a pathway to British citizenship in response to the National Security Law, for almost 3 million Hong Kong residents.[245]

# IV. Analysis

While the previous two parts have dealt with Hong Kong's history in general and the path of its democratic development, respectively, the last part will combine the insights gained. For this purpose, Hong Kong's democratic development will be scrutinized through the lenses of the city's identity, Beijing's attitude towards it, as well as uncovering the role

[241] Cradock, *Experiences of China*, 235f.

[242] Article 67: The Legislative Council of the Hong Kong Special Administrative Region shall be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council.

[243] Dimbleby, *The Last Governor*, 393.

[244] Dimbleby, 339.

[245] For more information, see: Laura Westbrook, "Explainer | National security law: how Hong Kong BN(0) passport holders can apply for Britain's special visa", *South China Morning Post*, 24 July 2020. https://www.scmp.com/news/hong-kong/politics/article/3094460/national-security-law-how-hong-kong-bno-passport-holders

of the Hong Kong elite. It will become obvious, how complex and intertwined the relationship between these three players is, and how they influence each other. Finally, a conclusion will be reached in the last chapter about the British legacy for Hong Kong's democratic development, by taking into account the analysis that follows.

## IV.I. – The Hong Kong Identity

When analysing the democratisation of Hong Kong, the identity of its inhabitants is one of the keystones to understand the course of its development. Hong Kong's identity is, as its government, a hybrid: shaped by 156 years of British occupation on the one hand, and by China's presence and interference on the other.

Further up it has been outlined how Hong Kong was administered during its first decades under British rule. A small minority of foreigners governed over a body of locals which greatly outnumbered them. To solidify its rule over the increasing population, the small ruling class recruited native elites to function as a communicators and mediators between the colonial rulers and the native Hong Kong's inhabitants. With the passage of time, the methods to win the support of the population turned towards social welfare and cultural assimilation. Housing, sanitation, and education programmes were introduced, whereby a focus must be placed on the latter. In a British colony the education served to introduce western knowledge into the local culture. Whereas the first schools were run by missionaries and the Chinese upper classes were still sending students to the mainland for education, the early 20th century saw the introduction of institutions of higher learning.[246] The further subsidizing of the schooling program and eventual free schooling helped in solidifying British influence in the education sector. In his book *Hong Kong in the Shadow of China*, Richard C. Bush links a higher degree of education with a stronger identification with democratic values.[247]

Apart from the top-down impact of the colonial administration, the mentality of Hong Kong's Chinese inhabitants has to be also taken into account. Initially a small fishing community, the colony was marked by the influx of refugees the territory had to accommodate over the decades, especially since the 1911 collapse of the Qing government and

[246] The University of Hong Kong for example, established in 1911, is the territory's oldest institute of higher learning.
[247] Bush, *Hong Kong in the Shadow of China*, 151.

the subsequent warlord era. Further refugees arrived during both World Wars, as well as the civil war between the Nationalists and Communists on the mainland. Dimbleby writes about the refugee mentality: "This is a refugee community. It is tough to say it, but they are on the run. People in Hong Kong are mesmerised by money. Not so much because of greed – it is to get security… Today China is getting closer, and they think, 'We've tog to make some money, because with taha money we can buy our security. We can buy our ticket out of here."[248] It is this preoccupation with money that has earned Hong Kong's citizens the moniker to be apathetic towards politics and democracy.

The victory of the Chinese Communists over the Nationalist government had another effect on Hong Kong. In the late 1940s fewer refugees had the desire to go back to China. While previous refugees had mostly returned to their ancestral homes after having built a new life in Hong Kong, the newly erected Communist regime brought a change to this dynamic and led to an increase in the Hong Kong population. The colonial government, recognizing this changing trend in 1950 reacted by imposing stricter border controls, fearing infiltration by Communist agents, and breaking from the previous practice of a relatively open border between the territory and the mainland.[249] Hong Kong, now closed off from the mainland until the 1970s, provided the ground for the emergence of a local identity. In combination with the rule of law, civil liberties, and the expansion of the education system, this led to a parallel development compared to the mainland, were the terror of the communist rule reigned. Hong Kong's identity was now shaped by refugees who either had no desire to go back or a new generation, which grew up sheltered from the mainland, enjoying the stability of Hong Kong's system.[250]

This new generation of Hong Kong citizens soon reached maturity. Young and educated abroad, having grown up in a city where Cantonese names had been replaced by English ones, enjoyed Hong Kong cinema, and most importantly, had grown up under the mantle of civil liberties bestowed to them by the British administration after World War II. This mixture resulted in two realizations: the territory uniqueness, despite a shared heritage and beliefs with the mainland, and that the question of the city's future after the handover loomed large. [251] A fledgling democratic movement was born, too weak for serious

[248] Dimbleby, *The Last Governor,* 81.
[249] Dimbleby, *The Last Governor,* 103.
[250] Tsang, *A Modern History of Hong Kong*, 180f.
[251] Yew Chiew Ping and Kwong Kin-ming, 'Hong Kong Identity on the Rise', *Asian Survey* 54, no. 6 (December 2014): 1091, https://doi.org/10.1525/as.2014.54.6.1088.

upheaval but sufficient to be noticed. Rather than dealing with the budding desire for democratic reform, the British government instead dismissed it and chose to answer with welfare programmes.[252] This pattern of focusing on socio-economic questions whenever political unrest arose is something Beijing and the Hong Kong government have copied.[253]

The most heated phase for Hong Kong under British rule came during the 1960s when Mao Zedong initiated the Cultural Revolution on the mainland. Aiming to preserve Chinese Communism by purging any influence of capitalism, signs of bureaucracy and remnants of traditional Chinese culture, China was plunged into ten years of Chaos from 1966 until the death of Mao in 1976.[254] The turmoil of the Cultural Revolution reached Hong Kong in 1967 in the form of the 'Confrontation'. The ensuing clashes between communists and the government police forces, accompanied by assassinations and bombings thwarted the Communists' plans to instigate the Hong Kong population against the British government. On the contrary, the professionalism of Hong Kong's police force and the resilience of the British government in the face of adversity won over the sympathy of the locals. In the aftermath of the unrests the territorial government agreed to reform the political system and allow for more participation of the Chinese, also to better protect Hong Kong from the mainland's influence.[255]

The last days of British rule served as a catalyst for Hong Kong's transformation. Through massive social welfare programs, the British sought to win the heart and soul of the Hong Kong people. Governor Murray introduced a 10-year housing plan in 1973, striving to accommodate 1.8 million people. Legislations regarding equal pay for equal work were passed and both the police and administrative structures underwent reform, allowing for more local representation.[256] This desire of the British to look after the well-being of Hong Kong was later labelled as hypocrisy Chinese during the negotiations over the Joint Declaration. Thatcher's feeling of responsibility towards Hong Kong was brushed aside with the statement, that with Hong Kong being a part of China, the British say in that matter

[252] Patten, *First Confession,* 26f.
[253] See for example during the 2019 Water Revolution: Kris Cheng, "Hong Kong leader Carrie Lam rules out protest concessions, urges focus on economy", *Hong Kong Free Press*, 9 August 2019. https://hongkongfp.com/2019/08/09/hong-kong-leader-carrie-lam-rules-protest-concessions-urges-focus-economy/
[254] Felix Wemheuer, *Mao Zedong*, Originalsausgabe, Rowohlts Monographien 50704 (Reinbek bei Hamburg: Rowohlt Taschenbuch Verlag, 2010), 109ff.
[255] Tsang, *A Modern History of Hong Kong*, 190ff.
[256] Ibid., 197.

would not be taken seriously.[257] Apart from the Chinese rebukes, the Britain's dealings with the issue of nationality and passports cast a serious doubt on its commitment and moral obligation for the well-being of Hong Kong's citizens.

In 1974 the Independent Commission Against Corruption was established, and so successful that Hong Kong became one of the least corrupt societies in the world.[258] Former governor Patten noted Hong Kong's success as well, noting in his book *East and West*, that Hong Kong was "the only Chinese society, that for a brief span of 100 years, lived through an ideal never realized at any time in the history of Chinese society. […] Hong Kong had a competent government , pursuing market economics under the rule of law. It was a government that fully met the Confucian goal – 'Make the local people happy and attract migrants from afar'. (13.16)"[259] All of this set Hong Kong apart from the mainland, leading people to be proud to call themselves Hong Kongers. Lin interprets the situation such, that the British avoided the mobilization of the Chinese identity, so as to minimize anticolonial sentiments and to maintain stability.[260] According to Bush, the policies implemented by the colonial government after World War II to cater to the refugees welfare and provide some measure of social stability "became the seeds of Hong Kong's democratic momentum."[261]

Tsang mentions that the reason for no democratic development between the reinstalment of a British administration after the Second World war and the initiation of negotiations over the colony's future was the achievement of good government in the Confucian tradition, which satisfied the expectations and demands in this regard of the Hong Kong population and prevented a desire for further political reform to arise from the grassroot level.[262] The mainland refugees were busy with improving their and their children's livelihood. The British provided a means of participation on a local level by allowing the Chinese to be heard through the City District Officers. Secondly, with the involvement of the business elite as unofficial members of the LegCo, a link was provided between the colonial

[257] Cradock, *Experiences of China*, 211.
[258] Tsang, *A Modern History of Hong Kong*, 192.
[259] Patten, *East and West*, 21. 13.16. refers to *The Analects of Confucius*, the collected works about Confucius, book 13.
[260] Lin, 'Analyzing the Relationship between Identity and Democratization in Taiwan and Hong Kong in the Shadow of China', 28.
[261] Bush, *Hong Kong in the Shadow of China*, 2016, 153.
[262] Tsang, *A Modern History of Hong Kong*, 207.

government and the majority of Hong Kong's population. Largely content with their lives and the way Hong Kong operated, democratisation was not an issue.

What eventually prompted the Hong Kong people to clamour for more political participation was the initiation of the Sino-British negotiations over the territory's future in the early 1980s. Especially the denial of participation in the negotiations increased their worries about their own future after 1997 and how their new sovereign would impact their daily lives. Bereft of the opportunity to have a seat at the negotiation table, a good government after the Confucian ideal was not enough anymore. Satisfaction with the status quo made way for a desire for democratisation and increased participation. This was further intensified with the 1989 Tiananmen Square Protests. From then on, a speedier implementation of democracy was regarded as a safeguard against future intrusions of China into Hong Kong's autonomy after 1997.[263]

After the reversion of Hong Kong to China in 1997, the territory has followed a steady pattern already established prior to the handover. The central government in Beijing would try to extend its control over Hong Kong, as it did during both the negotiations over the Joint Declaration and the drafting of the Basic Law. Initially assuming a tolerant attitude, the tables turned whenever protests erupted, resulting in the delay of the implementation of universal suffrage, such as after 2003 and 2012, or in even harsher measures, as in 2020. The increase in unrest can be attributed to the fact that the citizens of Hong Kong not only see their civil liberties eroded, the city's autonomy undermined the promised implementation of universal suffrage distorted and stalled, but also their very identity threatened. Beijing wants to dictate what counts as a proper identity and what does not, by labelling certain anti-China behaviours as 'unpatriotic'. [264] The hardening stance of Beijing did not however result in more control, stability and prosperity, but rather gave birth to a localism movement in 2016. This movement advocates for the autonomy of Hong Kong as stipulated in the Basic Law and goes so far as to call for independence from China, something which is impossible, both in the eyes of the central government and under the Basic Law.[265]

[263] Cradock, *Experiences of China*, 228.
[264] Sing, 'The Legitimacy Problem and Democratic Reform in Hong Kong', 518.
[265] Article 1 of the Basic Law states, that 'The Hong Kong Special Administration is an inalienable part of the People's Republic of China.'

Yew and Kwong also acknowledged that Hong Kong's identity is shaped by its unique history: a colonial possession which was not set onto the path for self-government and eventual independence, but which was handed back to another sovereign, authoritarian regime. They identify two key elements at odds with the imagined Chinese national identity namely, "[the] Hong Kongers' sense of entitlement in politics, and a psychological resistance to the Chinese Communist Party (CCP). The former is exemplified by the expansion in political participation since the 1970s that has helped nurture a sense of belonging and an imagined community among locals. The latter largely emanated from immigrants who fled the Mainland to Hong Kong after the CCP came into power and during periods of socio-political turbulence from the 1950s to the 1970s, such as the 1966-76 Cultural Revolution."[266]

By ignoring Hong Kong's uniqueness and working towards its assimilation into the mainland, the CCP has achieved quite the opposite result – it has managed to strengthen the Hong Kong identity vis à vis the mainland's, whereby the influx of mainland immigrants creates a us vs them mentality. Furthermore, it has coaxed the more radical elements of the city's pro-democracy movement to radicalize, calling for independence, thus further angering Beijing. Especially the younger generations in Hong Kong have been polarised by Beijing's actions.

## IV.II. – Beijing's View of Hong Kong

Opposing Hong Kong's identity clamouring for a truly autonomous Hong Kong and the implementation of universal suffrage, is the stance of the Central Leadership in Beijing, which had evolved out of a consistent attitude the mainland China had towards Hong Kong. The core interests of the CCP add to the entrenchment of this attitude. First and foremost is the survival of the Party. Therefore, any developments hinting at diminishing or subverting its control over China are stopped. Next comes the preservation of Chinese sovereignty over its territory, the maintenance of territorial integrity and the achievement of national unification. This shows, how futile calls for the independence of Hong Kong are. Sing next identifies three goals the CCP has especially for Hong Kong: to preserve Hong Kong's economic importance for China; achieve a stronger integration into the mainland to lure

[266] Ping and Kin-ming, 'Hong Kong Identity on the Rise', 1095.

Taiwan into unity; and to prevent Hong Kong from becoming a subversive base.[267] When Xi Jinping came to power, the Communist Party experienced a shift towards strengthening the national security, which put Beijing's core interests more into focus. In one of his first speeches, Xi Jinping therefore perpetuated China's attitude towards Hong Kong, by calling on Hong Kong compatriots to put the interest of the nation before their own.[268]

Both the Nationalist and Communist governments informed Britain about their intentions to reverse the unequal treaties and resume sovereignty and control over the entirety of Hong Kong upon the termination of the territory's lease. After the defeat of the Nationalist regime, the Communists' attitude towards Hong Kong was infused with fears and suspicion. Fears that a democratisation of the territory might spill over into the newly emerged communist People's Republic; suspicions that the British where using Hong Kong just for that very same purpose. Especially when decolonization was on its march in the late 1950s, these fears and suspicions prompted the Communist Party's leadership to attempt to influence events and minds in Hong Kong prior to the handover in 1997.[269] Prime Minister Zhou Enlai warned the British, not to treat Hong Kong like their other colonies, otherwise 'the territory may be deluded into thinking that it will one day share their destiny and achieve independence'.[270] In 1972, China requested the removal of Hong Kong from the United Nations' list of non-self-governing territories. Bush states that this was done to rule out the territory's self-determination.[271] After the 1949 Communist victory over the Nationalists, the scales of power had tipped in favour of the Chinese, prompting the British to rather focus on Hong Kong's economic development and extend their welfare programs, than to preoccupy themselves with the implementation of democracy.

The suspicion of subversive activities on the side of the British was intensified during the Joint Declaration negotiations and persists until today. The British suggestion to involve Hong Kong in the talks to from a 'three-legged stool' was anathema to the Chinese, who already in the early 1980s refused to see the territory as its own entity. They insisted to know Hong Kong's citizens and their view better than the British, suspecting the British

[267] Sing, 'The Legitimacy Problem and Democratic Reform in Hong Kong', 525. However, the economic value of Hong Kong to China is questionable, as Hong Kong's contribution to the national GDP is about 2-3%. However, the city does serve as a window to the west, with its distinct judicial and capitalist being the main points which attract foreign firms, which then also use Hong Kong to expand into China.
[268] "Profile: Xi Jinping: Pursuing dream for 1.3 billion Chinese," *Xinhuanet*, March 17, 2013, http://english.cri.cn/6909/2013/03/17/2941s754138.htm.
[269] Patten, *First Confession*, 187.
[270] Patten, *East and West*, 25.
[271] Bush, *Hong Kong in the Shadow of China*, 13.

to set the territory on a path towards true independence, rather than autonomy under China.[272] Insert here:

China's suspicions were once again reinforced in 1989 by both Hong Kong, as well as the West's condemnation of the Tiananmen Square protests' crackdown. July 4th events. The combined support for the student protesters in Beijing confirmed the leadership's view that Hong Kong was used as a base of subversion by the West. In response, it reverted some lenient decisions left out from the Basic Law, reimplementing a stricter version of Article 23.

Governor Patten's arrival continued China's suspicion of western subversion. The governor's confrontational and unilateral stance damaged the political relations between Hong Kong and Beijing. With the approach of the 1997 deadline, China's tolerance for a truly autonomous Hong Kong waned. Dimbleby describes the influence Beijing tried to exert over Hong Kong's legislators when the governor proceeded with the unilateral implementation of his reforms in the LegCo.[273] Hong Kong's administrative body was called upon to forfeit its loyalty to the British government and work with the Preparatory Committee instead, proving their 'loyalty' to the future sovereign.[274] The 'through-train' established during the Joint Declaration negotiations derailed and Beijing proceeded with setting up its own government with the Preparatory Committee, thus ensuring that the 1995 elected LegCo would be dismissed and replaced after 1997.

Despite its efforts, the LegCo green-lighted the Patten reforms, only for them to be unravelled after 1997. Warnings by Chinese political leaders, such as Qian Qichen[275], were issued that, "In the future, […], Hong Kong should not hold political activities which directly interfere in the affairs of the mainland."[276] Furthermore, Hong Kong's journalists were reminded that there was "no such thing as absolute rights and freedoms."[277] These early interferences already painted a picture of the conflicts to come after Hong Kong's reversion to China.

[272] Cradock, *Experiences of China*, 211.
[273] Dimbleby, *The Last Governor*, 258ff.
[274] Dimbleby, *The Last Governor*, 371.
[275] Qian Qichen was a Chinese politician and served as the PRC's Foreign Minister from 1988 to 1998.
[276] Dimbleby, *The Last Governor*, 371.
[277] Ibid., 403.

After Hong Kong's handover, the same issues continued to plague Beijing: the fear, of an autonomous Hong Kong serving as a base for subversion, should Hong Kong democratize, the ripple effect this might have on the rest of the country. However, Beijing agreed in its Basic Law that it would eventually allow Hong Kong's citizens to elect both their chief executive, as well as the Legislative Council through 'elections after democratic procedures.'[278] There is a certain irony, that Beijing is now asked to introduce genuine democracy to the territory, which is something the British were not willing to do during their century and a half long rule over Hong Kong. Beijing has complained about double standards applied by the west, Bush has noted.[279]

While the first six years of Chinese rule over Hong Kong were marked by restraint, 2003 proved to be a watershed moment and the end of Beijing's laissez-faire policy.[280] With its first interpretation of the Basic Law by the NPC in 2004 in response to the 2003 protests, Beijing aggravated a pattern which was first set in motion after 1989, and showed openly for the first time, that it was inclined to twist the Basic Law in its favour. Unable to exert direct control, it assumed control over the changes to Hong Kong's electoral system. Hong Kong does not have any legal mechanism to challenge this decision and Gittings notes, that with its interpretation, the NPC had taken away "a power which Hong Kong would have been allowed to exercise on its own under the original wording of the Hong Kong Basic Law, and interpreting it in a way which instead gave the Standing Committee the final decision on the matter."[281] This became obvious, when the NPC Standing Committee announced in 2007, that the election of the Chief Executive "may be implemented by the method of universal suffrage."[282] This decision postponed the implementation of any kind of universal suffrage for another decade. Additionally, in 2013 Beijing tightened its grip once again, by declaring that any future CE must be patriotic, love China and love Hong Kong, otherwise the city could "become a base and the bridgehead from which to subvert the socialist system in the mainland."[283] Patten had foreseen such an event in the

[278] See Article 45 of the Basic Law and Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region".
[279] Bush, *Hong Kong in the Shadow of China*, 10.
[280] Gittings, *Introduction to the Hong Kong Basic Law*, 69.
[281] Gittings, *Introduction to the Hong Kong Basic Law*, 6.
[282] See *Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008*, annexed to the Basic Law.
[283] Ortmann, ‚The Lack of Sovereignty, the Umbrella Movement, and Democratisation in Hong Kong', 118.

last year of his tenure, according to Dimbleby, correctly pointing out that the Chinese will undertake measure to ensure their control over the political system in Hong Kong, and sidelining the pro-democracy parties.[284]

From the 2003 unrests up to 2012, Beijing was willing to listen to Hong Kong and to concede to its voice.[285] The tables turned when Xi Jinping came to power in 2012 and put China on a more assertive path. Under his tenure, Beijing's grip on Hong Kong started to tighten. This was expressed after the 2014 Umbrella Movement, when the Communist Party's unwillingness to depart from its declared policy and principles for electoral reform. Whereas in 2003, Hong Kong's pro-democracy activists had realized their political power for the first time and voiced their dissatisfaction with the Hong Kong government through peaceful protests, and while the 2012 protests were still held peacefully in the form of sit-ins, 2014 saw massive escalations and violence unleashed. Furthermore, key differences between Beijing and the pan-democrats resulted in a stalemate of the democracy movement. Its desire to ensure that only acceptable candidates, who are not confrontational towards the central government and its ideology, was further expressed in 2014 in the White Paper '*The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region'*. This states that the mainland's sovereignty, security and development interests are to be paramount in Hong Kong. Furthermore, any officials, legislators, and judges of Hong Kong must be 'loyal to the country' and 'subject to oversight by the central government'.[286] The narrative of a 'loyal' and 'patriotic' Hong Kong, coupled with Beijing's unbudging stance served as a disillusionment for many in Hong Kong and as an omen for things to come.

2016 brought no respite, when Beijing once again reinterpreted the Basic Law after an oathtaking controversy.[287] The first pro-independence protests further alarmed Beijing, as it does not tolerate any expression which might suggest a fragmentation of the national unity and regards such as subversion against the party's leadership.

[284] Dimbleby, *The Last Governor,* 405.
[285] Sing, 'The Legitimacy Problem and Democratic Reform in Hong Kong', 530.
[286] Ortmann, ,The Lack of Sovereignty, the Umbrella Movement, and Democratisation in Hong Kong', 118.
[287] Two democratically elected lawmakers used derogatory terms to refer to mainland China during their swearing-in session. Beijing intervened and declared, that should lawmakers not take the oath 'genuinely or solemnly', they were to be deprived the right to assume office.

2020 was the third watershed moment for both Hong Kong and Beijing. The 2019 proposed extradition bill would have plugged only a minor loophole in Hong Kong's law, but critics argue that it would have given China the opportunity to undermine 'one country, two systems' framework and get access to activists whom the Central Leadership perceives as a threat.[288] Prominent pro-democracy activists were already imprisoned on charges relating back to the 2014 protests, thus preventing them to participate in the annual June 4th Vigil.[289] After the massive turmoil during the starting in March of 2019, Beijing was no longer willing to delay the legislation of a National Security Law, to not only exert its control over the territory, but to also strengthen it. The effects were immediately visible, as the new law was stricter than both the 2019 extradition bill and the 2003 security law. Protesters were warned on the very next day, that their actions might violate the new security law. The ever-resourceful protesters started therefore to hold up blank sheets of paper, to underline the censorship and infringement upon the freedom of speech in Hong Kong in a new and unfamiliar environment.[290] In 2020, the Covid-19 pandemic was used as a reason to postpone a LegCo elections.[291] It is speculated that the Hong Kong government was afraid, that the majority of seats would be won by the pan-democrats, a pattern which had played out after previous protests. By delaying the elections, the government hopes that tempers have cooled down after a year and the pro-establishment has a better chance at maintaining control.

Eric Ip had suggested, that the NPCSC Interpretations and Decisions were intended to lead Hong Kong to adjust their democratic expectations on the one hand, and to scrape away the city's civil and political liberties little by little on the other.[292] In hindsight it becomes evident how Beijing's grasp over Hong Kong has tightened over the years. What had started as attempts to influence the city's future while still under British rule, has culminated in 2020 with a serious breach of the Joint Declaration and Basic Law. Apart from the deadlock regarding the democratisation of Hong Kong, the National Security Law

[288] Jessie Lau and Jeffrey Wasserstrom, "Hong Kong: Law Making and Law Breaking", *The Diplomat*, Vol. 69, August 2020.
[289] Ibid.
[290] See Lisa Lim, "When silence speaks louder than words – in Hong Kong, blank Post-its and pages used to convey meaning", *South China Morning Post*, 21 July 2020. https://www.scmp.com/magazines/post-magazine/short-reads/article/3093432/when-silence-speaks-louder-words-hong-kong
[291] Laignee Baron, "Around the World Elections Are Being Delayed Because of the Pandemic. Here's Where Experts Say Hong Kong Went Wrong", *Time*, 7 August 2020. https://time.com/5877242/coronavirus-elections-postpone-delay-hong-kong-covid19/
[292] Ip, 'Constitutional Conflict in Hong Kong Under Chinese Sovereignty', 90.

severely infringes upon its civil liberties and judicial independence, taking Hong Kong several paces on the path to become one of China's many mega-cities. For the Central Leadership in Beijing this is a favourable situation since it has successfully carved away at Hong Kong's autonomy and massively strengthened its control over the city.

## IV.III. – The Hong Kong Elite

To return to the metaphor of the 'three-legged stool' envisioned by the British during the Joint Declaration negotiations, in the case of this thesis the last leg would consist of the Hong Kong elite and the role it plays in the democratisation process.

As mentioned before, Hong Kong's main raison d'être under British rule was as trading entrepôt, and later as a commercial and financial centre. Therefore, the need arose to cooperate with the local merchant class, which early on consisted of primarily foreigners, who were replaced with local businessmen in time. Leo Goodstadt states, that the British "sought to enhance their legitimacy in the absence of democracy through endorsement from representatives of the busines elite."[293] Cooperation between the British administration and the local populace was strengthened through the admittance of some successful Chinese to the ExCo, where they enjoyed a privileged role in policy and law-making.[294] According to Cottrell, the colony was run mainly in the interest of doing business.[295]

This focus of Hong Kong on its raison d'être resulted in a fixation of its business community on money and success. Political reform and social welfare programs were regarded as a threat to the business community's economic hegemony.[296] Politics and business were perceived as natural enemies, and business always had and should come first.[297] Many were questioning the need to change anything about Hong Kong's system, which had worked so well with the executive-led government under the governor, which was in turn accountable to London.[298] During colonial rule, the business sector was enjoying great privileges: low taxation, minimum welfare provisions and few government regulations. The

[293] Leo F. Goodstadt, 'China and the Selection of Hong Kong's Post-Colonial Political Elite', *The China Quarterly* 163 (September 2000): 721, https://doi.org/10.1017/S0305741000014636.
[294] Goodstadt, 'China and the Selection of Hong Kong's Post-Colonial Political Elite', 721.
[295] Cottrell, *The End of Hong Kong*, 306f.
[296] See for example Dimbleby, 100 on the business community's response to the Young Plan.
[297] Cottrell, *The End of Hong Kong*, 178.
[298] Ibid., 179.

business elites feared the rise of democracy, because they thought that it would result in an abolishment of their privileges, namely higher taxes, trade unions and stricter government regulations.[299] Recognizing the potential of a democratic system, the business elite still preoccupied itself on how to maintain Hong Kong as a merchant city. Personal freedom was not associated with democracy, but rather economic prosperity.[300] Jonathan Dimbleby's *The Last Governor: Chris Patten & The Handover of Hong Kong* lists many examples of the business elite's attitude towards an issue, which still dominates the territory.[301]

The prominent position of the business elite and its attitude towards democracy made it a target for China. *China and the Selection of HK's Post-Colonial Political Elite:* Chinese official saw Hong Kong capitalism not as a competitive market, but as an economic system with a minority of wealthy individuals at the top, supported by a pro-business government. "The Chinese bureaucracy handling Hong Kong affairs came to believe that tycoons and taipans controlled the levers of power."[302] The alignment of the business communities interest and Hong Kong's economic value for the mainland prompted Beijing to gain the support of the former. The fact, that both parties opposed a democratisation of Hong Kong provided Beijing with a reliable "partner in the fight against democratic challenges".[303] The support of the business sector was helpful to maintain stability in Hong Kong's capitalist system by maintaining the confidence of investors. Furthermore, Hong Kong's business elite, which contributed major investments in the 1980s and 1990s, was vital to the economic modernization envisioned by Deng Xiaoping.

The first step in this direction was the involvement of business leaders in the drafting of the Basic Law. Although 23 of its 59 committee members were from Hong Kong, Beijing made sure that with a major representation of business leaders, the drafting process would work in its favour.[304] To ensure the continued support of the latter, it was decided that the functional constituency system, introduced by the British in the late 1840s, should

[299] Brian C.H. Fong, 'The Partnership between the Chinese Government and Hong Kong's Capitalist Class: Implications for HKSAR Governance, 1997–2012', *The China Quarterly* 217 (March 2014): 198, https://doi.org/10.1017/S0305741014000307.
[300] Dimbleby, *The Last Governor*, 89.
[301] See for example Dimbleby, 86f on Peter Woo's views on democracy and Hong Kong; Dimbleby, 124 for an insight on how Allen Lee viewed democracy; or Dimbleby, 385: one ExCo members states: 'We can only talk about social welfare and civil rights after we have made money.' Dimbleby labels this as 'the authentic voice of Hong Kong's elite.
[302] Goodstadt, 'China and the Selection of Hong Kong's Post-Colonial Political Elite', 727.China and the Selection of HK's Post-Coloinial Political Elite, source 32
[303] Fong, 'The Partnership between the Chinese Government and Hong Kong's Capitalist Class', 197.
[304] Gittings, *Introduction to the Hong Kong Basic Law*, 20.

be kept. Back then, some sectors of Hong Kong's society were allowed to nominate their representatives for unofficial appointment to the ExCo. Ultimately, the Governor had the last word, most likely rejecting any nominees he disliked. This changed in 1985, when a more expanded system of functional constituencies, covering a wider range of groups and professions, was allowed to elect their representatives directly to the LegCo. Gittings notes, that although the first election in 1985 produced councillors such as Martin Lee and Szeto Wah, the functional constituencies soon slowed the pace of democratisation in the Legislative Council.[305] The number of directly elected seats was expanded from only 12 in 1985 to 30 in 1995, replacing the appointed seats. This had to take place, because Article 68(1) of the Hong Kong Basic Law requires a legislature 'constituted by elections'. China, not willing to concede the entire LegCo seats to popular elections under the geographical constituencies model, insisted on the preservation of the functional constituencies system in its 2012 decision. With a solid representation of Hong Kong's business interest in the LegCo secured, Beijing's control in Hong Kong's legislature was safe as well. Due to the fact that Beijing had promised that 'Hong Kong people rule Hong Kong', it therefore had no way to be directly represented in Hong Kong, and so the role to govern the city was entrusted to the capitalist class.[306] Bush sums up the process as following: "To ensure that selection processes would produce results to CCP's liking and guarantee a central role for its loyalists, it drafted the Basic Law to properly engineer the electoral system to give extraordinary power to its loyalists. For the selection of the chief executive, the key institution was the election committee and for LegCo, it was functional constituencies, or FCs."[307]

Nowadays, whenever the business elites see their interests in Hong Kong threatened, they can bypass the Hong Kong government and go straight to Beijing. The expansion of Hong Kong firms into the mainland and a closer economic integration with China have further consolidated the positions of Hong Kong's business leaders. [308] Their fears have remained the same, and so far any reform of the present-day system in favour of democracy

[305] Ibid., 133. One must note here that Martin Lee and Szeto Wah were returned through the legal professions and education sector FCs, respectively.

[306] Fong, 'The Partnership between the Chinese Government and Hong Kong's Capitalist Class', 196. Fong later quotes Xu Jiatun, director of the Xinhua News Agency Hong Kong branch from 1983 to 1989, in his article, who divulged Beijing's view of Hong Kong at that time: To implement the principle of "Hong Kong people ruling Hong Kong," the future HKSAR government shall be mainly made up of the local capitalist class with the participation of the working class. It shall be a cross-class alliance, but the capitalist class should form the core of the whole alliance.

[307] Bush, *Hong Kong in the Shadow of China*, 79. See also Bush 84, for a detailed overview of business representation in Hong Kong's government in 2014. n

[308] Fong, 'The Partnership between the Chinese Government and Hong Kong's Capitalist Class', 199.

has been opposed, with arguments that it would harm their interests and reduce Hong Kong's competitiveness.[309]

One point of critique is a partial lack of public representation in the functional constituencies. Loh observes that nine out of 28 FCs function by corporate voting, and a further nine practice mixed corporate and individual voting.[310] Furthermore, elections by the FCs are a breach of the principle 'one person, one vote', according to Young and Law.[311] Since many FCs represent only small voting bases, some individuals are therefore endowed with two votes in LegCo elections: one in their respective geographical constituency, and a second in their respective FC.

Apart from protection of the business elites' interests through the FC system, Ho et al. have discovered that, "substantial linkages […] between the most powerful organisations through elite-ties within and across the four sectors [of the chief executive Election Committee].[312] In their study, the ExCo held the highest business-government cross-sector elites. As Hong Kong's is an executive-led system, the political power is thus centralized with the Beijing approved Hong Kong government. Here the chief executive appoints his ExCo councillors in the same manner British governors did, which results in a government dominated by business interests first, and political reform second. Ho et al. see this tightly knit business-state networks as a "systemic barrier" against any democratisation.[313]

It is because of this obstacle the FCs pose towards an implementation of universal suffrage and democratic reform, that the pan-democrats have for a long time argued for their abolishment.[314] However, in Chief Executive C.Y. Leung's 2014 report to the NPCSC *Report on Whether There Is a Need to Amend the Methods for Selecting the Chief Executive of the HKSAR in 2017 and for Forming the Legislative Council of the HKSAR in 2016* he recommended no constitutional change regarding the electoral arrangements for the LegCo in 2016.

With the Basic Law facilitating the representation of interests, and not people, Bush notes that, "the current membership make-up of various advisory bodies is biased toward

[309] Bush, *Hong Kong in the Shadow of China*, 212.
[310] Wing-Chung Ho et al., 'Hong Kong's Elite Structure, Legislature and the Bleak Future of Democracy under Chinese Sovereignty', *Journal of Contemporary Asia* 40, no. 3 (August 2010): 470, https://doi.org/10.1080/00472331003798442. The problem of corporate voting is addressed here, with the critique that corporate voting by corporate entities lacks public accountability.
[311] Ibid., 470.
[312] Ibid., 482.
[313] Ibid., 466.
[314] Chen, 'The Law and Politics of the Struggle for Universal Suffrage in Hong Kong, 2013–15', 192.

the industrial, commercial, and professional sectors, and does not match the development of an increasingly pluralized civil society."[315]

# V. Conclusion

This thesis has aimed to show in its previous chapters, how present-day Hong Kong has been shaped by the British colonial rule. China did perpetuate the Crown Colony system of government after the handover with its executive-led approach, replacing the governor with a chief executive accountable rather to Beijing than to the local population, and vesting the tenure with powers even greater than those the British governors enjoyed. Furthermore, the functional constituencies were kept, ensuring Beijing's continued influence in the city's legislature. Britain's initial aversion to implement universal suffrage and participatory democracy aligned with China's consistent stance towards the territory. However, when the British tried to introduce reforms, the balance of power had already shifted in favour of the Chinese and they were able to advocate for the maintenance of the status quo.

The Joint Declaration set the tone for the future of Hong Kong, which then was further outlined in the Basic Law. Whereas the former was mainly focused on guaranteeing Hong Kong's future as a business and commerce centre after 1997, the latter did include provisions regarding democratic reform and universal suffrage, albeit in a language which was kept intentionally vague. This allows Beijing nowadays to interpret the Basic Law provisions according to its needs. In the context of both the Joint Declaration and Basic Law, Gittings notes the many accidents of history accompanying both. The window of opportunity to initiate the negotiations with the Chinese for the Joint Declaration was very brief and is something not fathomable under nowadays more assertive regime. Furthermore, the 1989 Tiananmen Square protests was detrimental to the Basic Law's drafting process. Dimbleby notes, that "Tiananmen Square [… ] had exacerbated the 'profound suspicion' on the Chinese side of Western-style democracy as a force for political change and instability, even chaos."[316] Gittings describes exactly this as one of the accidents shaping the outcome of the Basic Law to the detriment of Hong Kong, especially with the reimplementation of Article 23.[317]

[315] Bush, *Hong Kong in the Shadow of China*, 2016, 76.
[316] Dimbleby, *The Last Governor*, 57.
[317] Gittings, *Introduction to the Hong Kong Basic Law*, 35f.

Another important influence were the different approaches of Sir Percy Cradock and Sir Christopher Patten towards Hong Kong. While Cradock sought to operate within the frameworks set out by the Chinese and tried to achieve the best possible outcome for Hong Kong within these, Patten took a different approach. He tried to speed up the democratisation process through unilateral actions, which earned him the scorn of both Beijing and Cradock. The latter criticized Patten for politicizing Hong Kong and raising the hopes of the local people. However, the author sides with Patten's approach. The outcome of both Cradock's and Patten's strategies were the same: in the end Beijing pushed through with its demands. However, an earlier democratic reform, perhaps with the Young Plan in the 1940s, would have created a stronger democratic foundation in Hong Kong, as well as a better understanding thereof by the locals. Furthermore, the Chinese authorities would have had to tear down a much more elaborate political system, which would in turn have tarnished Beijing's international reputation. The way things were, the Central Leadership simply declared that Hong Kong was an internal matter and only for China to solve.

After the handover, the 'three-legged stool' of the emerging Hong Kong identity, the CCP's desire for control and the business elites' economic interests now shaped the debate for political reform. Since 2003, a democracy movement had formed in Hong Kong, which called for a quicker implementation of universal suffrage. Beijing's response in 2007 was to postpone universal suffrage to the 2017 chief executive elections. Furthermore, in 2014 further details regarding the electoral model were announced, all of which limited the range of candidates viable for standing for election. Ultimately, Hong Kong's legislators rejected the 2014 decision, bringing the democratic reform process to a standstill.

The limitations Beijing put on the electoral process, together with its stalling tactics ultimately led to a partial radicalization of Hong Kong's population. Goncalves argues, that the mid-to-late 2000s would have been the last time when an electoral reform could have occured in a 'gradual and orderly' fashion according to the Basic Law.[318] In 2014 Hong Kong was already too discontent with Beijing for this to happen. Bush and others argue, that even after 2014 an implementation of universal suffrage and the accommodation of different interest groups would have been possible, and that Beijing was unlikely to further

[318] Arnaldo M.A. Goncalves, 'Hong Kong and Macau Special Administrative Regions: The Downfall of The "One Country, Two Systems" Policy', *International Journal of Humanities and Social Science*, Vol. 9 No. 10, October 2019. Doi: 10.30845/ijhss.v9n10p2

restrict Hong Kong's freedoms.[319] However, with the developments in 2020, any such claims were put to rest. The new National Security law operates on the same principle as the Basic Law, namely that its provisions are extremely vague. This ambiguity allows Beijing to reinterpret the law as it pleases and to cover the broadest possible area of law. Furthermore, the 2020 National Security Law is more restrictive than previous pieces of legislature, such as the 2003 security bill, and not only interferes in the personal freedoms of Hong Kong's citizens, the freedoms of expression and press, but is also applicable to non-Hong Kong residents world-wide.

Before concluding the thesis, the author would like to take the opportunity to assess the question, whether the developments in 2020 could have been foreshadowed. The answer to this must be both a yes and a no.

While under the 'one country, two systems' framework the co-existence of socialism in China and capitalism in Hong Kong was provided for, the Basic Law planted the aspirations for many people in Hong Kong towards universal suffrage, democratic reform and ultimately a full liberal democracy. However, the steady encroachment of Beijing on Hong Kong's liberties and postponement of democratic reform made it clear that tensions would arise. Therefore, it was only a matter of time until tempers in Hong Kong flared up to a point where the CCP saw it necessary to intervene. Additionally, Beijing's core interests, such as national unity and the desire to reunify with Taiwan, stand in stark contrast to Hong Kong's identity and the city's technical autonomy.

Interestingly, both Britain and China created the conditions for a transition of Hong Kong from a colony and SAR respectively, to greater self-determination and even independence. However, neither the British set Hong Kong on the Crown Colony's 'cursus honorum', nor did the Chinese uphold the principles they themselves had drafted and enshrined in the Basic Law.

When it comes to the question of the British legacy, Hong Kong was "[…] a colony that was always regarded in London rather different from Britain's other dependencies, more trading post than settled community."[320] This view of Hong Kong resulted in the fact, that the British had avoided during the 156 years of their rule to introduce any kind of significant political change when comparing Hong Kong to other colonial possessions. One

[319] Bush, *Hong Kong in the Shadow of China*, 210.
[320] Patten, *First Confession*, 187.

look at the 1984 Joint Declaration unveils the top priority for both the British and the Chinese, namely the maintenance of ‘prosperity and stability’ after the handover. With this focus on economic matters, the issue of representative government and universal suffrage was included last-minute with the vague formulation ‘constituted by elections’.

In the end, what the Joint Declaration managed to establish was a safe system of transfer of sovereignty from the United Kingdom to the People’s Republic. In addition, due to mutual interests in the future economic prosperity and stability of Hong Kong, the Joint Declaration managed to detail in its annexes a system of administration and guarantee the continuation of prosperity under the current system. However, when it comes to the safeguarding of civil liberties and setting off the process of democratisation, the Joint Declaration has failed. Hong Kong was endowed with civil liberties and the foundations for universal suffrage, and then handed back to an authoritarian regime, which is expected to implement said changes.

Finally, when looking towards the future, the outlook is not reassuring. Both Hong Kong and Beijing face a prisoner dilemma type of situation, where both want stability and prosperity, but mutual distrust prevents a successful cooperation. Hong Kong sees Beijing as an authoritarian figure, keen on bending the city to its will. Beijing on the other hand remains always suspicious of Hong Kong’s potential to act as a subversive base against the CCP. This results in a vicious cycle, where every reform initiated by Beijing is met with protests over the years, whereby violence escalates as the situation remains in a deadlock. The next large protests are likely to happen in 2021, when the postponed November 2020 LegCo election should take place. The prospects for democracy are equally slim. Under the current situation, the only option would be a reform as envisioned by Beijing in 2014, returning pre-selected candidates, which are under the tight control of the CCP. A reform leading to the opposite, namely a western-style liberal democracy, where universal suffrage returns an accountable representative and responsible government, seems highly unlikely. Should Beijing persist with its interventionist manner, it is probable that the split between the Hong Kong identity vis-à-vis the Chinese identity will deepen. Since the trust between the two sides has been depleted, the only option for Hong Kong to achieve a western-style liberal democracy with universal suffrage stems for an internal change of the CCP, which is followed by a change of its view of Hong Kong.

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