

Open letter to US Congress: Why HK Democracy Act must be opposed

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Authors' Note: The US Congress is currently considering the Hong Kong Human Rights and Democracy Act of 2019. If this bill becomes law it will increase conflict between the US and China and increase US meddling in Hong Kong. It will become an excuse for unilateral coercive measures (sanctions) against China and Hong Kong. In the Open Letter below we explain in detail why this letter should be opposed. We urge you to share it with your representatives in Washington and urge them to oppose the Act.

HR 3289, the Hong Kong Human Rights and Democracy Act of 2019, was referred to the Committee on Foreign affairs on June 13, 2019. The bill “directs various departments to assess whether political developments in Hong Kong justify changing Hong Kong’s unique [i.e. preferential economic and trade] treatment under U.S. law and to determine whether China has eroded Hong Kong’s civil liberties and rule of law as protected by Hong Kong’s Basic Law.”

Currently, 16 senators and 25 House members from both parties have signed on as co-sponsors. The bill also directs the government to impose sanctions to those who suppress “freedom” in the territory.

The leaders of the “leaderless movement” of the Hong Kong protests are touring the capital, urging the US Congress to pass this bill. Despite claims of extreme obstruction and human rights oppression, it’s clear that they are traveling freely out of Hong Kong, speaking their minds freely while urging a foreign power to assess and impose sanctions on their own state. These contradictions indicate that all their claims should be critically analyzed. Some of these will be directly addressed below.

The bill itself should be opposed on the following grounds:

This bill would not serve the purposes for which it is written, namely, to reaffirm the objectives and principles set forth in the United States-Hong Kong Policy Act of 1992.

Nor would it affirm, support, or further Human Rights in Hong Kong.

The bill accomplishes little except to draw attention to US influence on the Hong Kong protests and highlights US officiousness in Hong Kong politics. This is within a toxic atmosphere of violence, chaos, and intrigue — engendered and engineered by the protestors — where the US is already credibly accused of fomenting, supporting, and encouraging this violence: by lending it moral support, meeting with its leaders — having high-level political and diplomatic meetings — threatening consequences if suppressed, and funding the lead organizations through the NED.

This bill is an act of moral hazard and implicates the US congress in violence, destruction, mayhem, injury, potential loss of life, and the degradation of civic processes. It will validate the current perception of the violent protests as US gray zone aggression in search of a pretext for further sanctions and aggression.

Furthermore, it will also degrade currently antagonistic China-US relations even further, pushing relations towards overt hostility and direct conflict, and setting the preconditions for war.

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The key arguments against this bill are as follows:

The PRC has upheld its commitments to Hong Kong in the Basic Agreement and Hong Kong Policy Act of 1992.

As the British returned the colony of Hong Kong to China in 1997, they negotiated the conditions of return and political statehood in the Basic Agreement, and the Hong Kong Policy Act of 1992. The PRC has upheld all its commitments to Hong Kong SAR elucidated in the Basic Agreement and the Hong Kong Policy Act of 1992: the fundamental letter and the law of the Joint Agreement and the Basic Law have all been upheld, as listed below:

– The chief executive has been appointed by the Central People’s Government on the basis of the results of elections or consultations held locally.

Although the British never allowed elections of the Hong Kong governor, as they left, they instituted provisions for the election of the chief executive by universal suffrage. However, there is no clause committing Hong Kong to direct democracy, nor is there a specified timeline for this suffrage to be achieved. Specifically: “The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”

– Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong remain in employment. British and other foreign nationals are employed in public posts in government departments.

The current Chief Executive, Carrie Lam, was a British citizen (who renounced her citizenship). Key members of the Legislative council are or have been British citizens. Currently, there is a large roster of British and Commonwealth judges in the Judicial system: two thirds (16 out of 22 judges) on the Court of Final Appeals (Hong Kong’s Supreme Court) are British Nationals or Commonwealth members. Eight of these are Peers (Lords and Ladies of the British nobility).

– The social and economic systems in Hong Kong have remained unchanged.

The Basic Law committed Hong Kong to free-market capitalism and prevented the institution of socialist measures. Hong Kong is still a free-market capitalist state, and it can be strongly argued the underlying cause of these protests is its unregulated, laissez-faire, corporate, finance and real estate-driven capitalism.

– Economic Law and practices have been maintained as originally agreed upon.

These laws have not been abrogated or changed, even though these economic policies have created tremendous hardship to the working classes, in particular in regards to unaffordable housing and poor prospects for work, and run counter to the PRC's widely acknowledged practices of lifting up society as a whole.

– *Hong Kong has retained the status of a free port and a separate customs territory.*

– *Hong Kong Special Administrative Region has retained the status of an international financial center.*

Its markets for foreign exchange, gold, securities and futures have continued, along with free flow of capital, and the independent Hong Kong dollar continues to circulate and remain freely convertible.

– *The Hong Kong Special Administrative Region has maintained independent finances.*

The Central People's Government does not levy taxes on the Hong Kong Special Administrative Region.

– *The Hong Kong Special Administrative Region has established mutually beneficial economic and cultural relations with other countries; and establishes independent agreements with states, regions and relevant international organizations.*

This includes its own extradition agreements with the US, UK, and 18 other countries.

– *The Government of the Hong Kong Special Administrative Region issues its own travel documents for entry into and exit from Hong Kong.*

Last but not least:

– *Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association,..of movement, of strike, of academic research and of religious belief have all been ensured by law.*

Private property, ownership of enterprises, legitimate right of inheritance and foreign investment all have been protected by law. All of these enumerated rights have been protected and defended by Hong Kong law. In particular, during weeks of some of the most violent protests that the region has seen in recent years, the Hong Kong authorities have treated these with extreme attention to Human Rights and due process. No law abrogating the right to protest was passed, nor were there any restrictive measures passed: no curfews, no general bans on assembly or protest, no bans on... signs, or any such law. No measures were passed abrogating freedom of expression.

Nor has there been any arbitrary arrest or detention. Although hundreds of protestors have been arrested, almost all of them have been released. To date, a single violent protestor has been sentenced to 80 hours of community service. (A single individual has an eye injury, but is recovering, and there is no proof that the police were responsible, and contrary to all logic, the individual in question is using all possible legal means to prevent investigation and the gathering of evidence). No other violent civil protest in recent memory—not in France (Yellow Vests), not in Spain (Catalan Independence), not in India (Kashmir), in Indonesia (Papua & West Papua), in the US (Standing Rock, Ferguson, Baltimore)—has there been such extended restraint demonstrated by the forces of order against such extreme rioting and violence. Over a period of

several weeks of violent rioting, infrastructure attacks, road blockades, and attacks, subway arson and sabotage, airport occupation, mass beatings of civilian bystanders, no protestors have been killed or suffered serious injury.

However, bystanders and people criticizing the protestors have been violently attacked and seriously injured: they have been mobbed, assaulted, and beaten unconscious with pipes, baseball bats, sticks; attacked with caustic lye (drain cleaner), or in the case of police, burned with Molotov cocktails, and stabbed. Police stations, Legislative Chambers, Political offices have been surrounded and attacked and set fire to, and even graves have been desecrated. Contrary to the claims of protestors, it is inconceivable the US or any other country would have tolerated such massive violence and insurrection.

To summarize: Hong Kong and China have been, and are clearly following, the accords signed and agreed to.

- There has been no interference with elections, electoral outcomes, domestic politics, or domestic legislation.
- Hong Kong has an independent judiciary – considered one of the most independent in the world.
- Hong Kong has a vibrantly independent media, unions, corporations, and electoral bodies.
- Hong Kong exercises independent executive, legislative, and judicial power, including that of final adjudication.

Global analysis bears this out:

The Cato institute’s Human Freedom Index evaluates the countries of the world across 79 distinct indicators of personal and economic freedom including: Rule of Law, Freedom of Religion, Freedom of Association, Assembly, and Civil Society, Freedom of Expression, Legal System and Property Rights. It’s understood that it is “a broad measure of human freedom, understood as the absence of coercive constraint”.

On this basis, the Human Freedom Index currently ranks Hong Kong as the third freest country in the world (2018), with only New Zealand and Switzerland ahead of it. Hong Kong currently ranks 14 rankings above the United States in Freedom (17th), and 114 rankings ahead of Ukraine, where the US recently intervened in with support for “democracy and human rights”. For over a decade—under so-called “Chinese encroachment”—it has ranked consistently in the top 3 countries of the HFI, making it one of the freest states in the world, according to conservative analysis.

This renders allegations of “loss of freedom” or “human rights” to be without substance or evidence.

The leaders of the protests, now touring the United States urging sanctions against Hong Kong on these grounds, are themselves the purest refutation of their own claims.

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Misinformation on Hong Kong

There is, however, a constant drumbeat of misinformation. These include allegations that:

“Beijing was behind the extradition bill”

This is untrue. The extradition bill was drafted, after extensive public consultation, in response to a heinous murder of a pregnant woman that was not extraditable under the current regime. A long-overdue bill for case-by-case extradition was written to plug this loophole, while explicitly excluding extradition for political crimes. The bill fits all the requirements of a well-crafted extradition bill and has multiple safeguards and checks to protect human rights and political abuse. It is a well-crafted piece of legislation that would pass muster in any democratic, sovereign state. Furthermore, it includes 8 layers of review, including 2 stages of administrative review, and 6 layers of judicial review by Hong Kong's fiercely independent judiciary (see above).

"The bill was designed to render people to mainland China"

This was a general bill for with guidelines and processes for extradition to any country. The framing of "extradition to China" was by the Anti-China protestors, and bears no relation to the actual bill or its intent.

Almost all sovereign countries have extradition agreements. Hong Kong is part of China, and the very notion that Hong Kong is some sort of extraterritorial criminal sanctuary outside the reach of Chinese law is a concept without legal merit.

Note also that the bill itself has been completely withdrawn.

Note also, that one of the most vociferous opponents of the bill, Martin Lee – one of the unspoken leaders and lobbyists for the protests – himself urged for a comparable extradition bill, giving the lie to the assertion that the extradition process is problematic.

"This is part of Beijing's encroachment on Hong Kong's autonomy"

The object facts show that this has not been the case, as enumerated and elaborated above (see "key arguments"), and below. Hong Kong has a fiercely independent judiciary, and it's inconceivable that it would extradite someone on Beijing's political whim. Furthermore, ... extradition treaties do not constitute an infringement on sovereignty.

"But Beijing has been resisting a demand for universal suffrage since the British left and still does. Hong Kong citizens became accustomed to freedom under the British, and rightfully claim it against Chinese encroachment."

It's important to emphasize that the British never gave universal suffrage to the Hong Kong people. It ran a brutal, demeaning, colonial apartheid state, where Chinese were second-class people, where segregated Jim Crow policies were the norm, and during Anti-British protests, Hong Kong citizens were often shot dead in the streets or disappeared. The British colonial administration put suffrage on the bill after never having allowed a meaningful vote during its control of Hong Kong, as a final act of challenge to the Chinese for reclaiming its own territory. Nevertheless, the Chinese, accepted this because they wanted a peaceful return of Hong Kong to China, and they did not want to derail the process or encourage capital flight.

Regarding the actual state of affairs within Hong Kong, Beijing does not decide what Hong Kong does internally but allows a "high degree of autonomy". This is the essence of "two systems", which the Chinese have upheld (see "key arguments" above). Hong Kong legislates, implements, and arbitrates its own laws, and they are following the guidelines for "orderly development" of universal suffrage that were outlined in the Basic Law. Although constituencies

currently elect the Chief Executive and Legislators, these can be legitimately acknowledged as accepted political practices in part of an evolving democratic process. They certainly do not constitute proof of Beijing's control.

“But aren't the “functional constituencies” that elect legislative members under the influence of Beijing?”

These constituencies are diverse and reflect many groups, including business, labor, trade and professional groups. They themselves represent a large number of individual members who represent a wide range of views. A constituency is not a single platform party. Many have members who are anti-Beijing, as shown in the diversity of election results and party seats, many of whom are opposed to Beijing or are outright nativist/secessionist.

“But didn't Beijing interfere in the elections by disqualifying the election of six members elected to the Legislative Council in July of 2017?”

Sixtus Leung, Yau Wai-ching, Leung Kwok-hung, Nathan Law, Yiu Chung-yim and Lau Sil-lai were elected to the Legislative Council on 14 July 2017. According to Article 104 of the Hong Kong Basic Law, elected members of the Legislative Council must swear an oath to uphold the law and swear allegiance to the Hong Kong SAR. This is basic legal practice in all political bodies, and an oath incorrectly delivered can be cause for disqualification. An oath deliberately abused, incorrectly spoken, insincerely delivered, or with obscenities added, or otherwise edited or lengthened would result in invalidation across most legal bodies.

The secretary-general of the Hong Kong Legislative Council invalidated their oaths because phrases were added, protests statements made, and obscenities deliberately spoken: “the People's Republic of China” was referred to as the “People's re-f*cking of Chee-na” (a derogatory term comparable to the N-word). Multiple independent judicial reviews by the Hong Kong Judiciary upheld these decisions. This is an action that would have happened in any reasonable legislative or political body.

“The working and middle classes are demanding democracy, not the business class, which is doing fine colluding with mainland Chinese state and private capitalists. They deserve democracy.”

The working classes want – and deserve – better representation, and better conditions of living or working, which the current political system cannot deliver (and which Beijing cannot change until 2047). This is not a fault with Beijing, but is a fault written into the Hong Kong basic law, as scripted, designed, and negotiated by the British, which allocated disproportionate power to business interests in order to conserve Hong Kong's freewheeling capitalist system, diminish popular will, and maintain its status as a haven for wealthy capitalists. This basic law absolutely bans the implementation of socialism or socialist practices; and guarantees capitalism until 2047.

In particular, Real Estate interests and the Anti-China Pan Democrats (currently prominent in the protests) in the legislature were instrumental in opposing the large scale creation of social/public housing as China has done on the mainland. As a result, currently, there are only about 150,000 units of public housing — a pittance relative to the actual demand and need. These groups have created the extreme housing pressures they claim to deplore and seek to blame China for.

“But there were large rallies. This is an undeniable expression of the Hong Kong people opposing the Chinese.”

Large rallies have been noted, but police counts claim about a tenth of what is claimed. Major western news agencies, using facial recognition technology, state that only a fraction of the claimed numbers can be verified. As noted elsewhere, it’s also important to note that there were large rallies against the protestors, and in support of the administrations, although these were largely erased from the western press and have been de-ranked on Google.

Note also that the large rallies have tapered off. As of the current moment protests seem to number only the hundreds, occasionally, thousands. This is a small percentage of a metropolis of 7.4 million.

Note also that these protests have turned incredibly violent and ugly. For example, a reporter for a Chinese mainland newspaper was attacked, bound, tortured and beaten by protestors during their takeover of the Hong Kong International Airport. When police and rescuers tried to free him, the protestors blocked them and also attempted to block the ambulance that eventually bore him off to the hospital, and beat the unconscious individual with a US Flag. Since then, countless Hong Kong citizens have also been mobbed and attacked and beaten — sometimes to the point of unconsciousness — for simply opposing the views of protestors. They have also been doxed, threatened, and had their businesses or homes vandalized or firebombed. The ugliness, violence, and terrorism of these protestors is a far cry from what any civilized society could tolerate as reasonable expression of dissent, nor do these protests adhere to any of the touted values of free speech for those who disagree with them.

“The pro-democracy movement is a threat to Beijing’s control of Hong Kong’s government and its corrupt protection of the business elite’s banking, real estate, corporate cartels. Big finance capitalism and Chinese state capitalism work hand in hand.”

Large sectors of the pro-“democracy” movement are actually bankrolled by certain wealthy anti-China business leaders, media barons, corporations, and receive extensive support — moral, political, financial — from the US and the NED. This gives the lie to the assertion that this is a “David and Goliath” fight.

This is also why the movement does not have a single articulated demand relative to business, business practices, real estate, or even capitalism, state, or financial, or otherwise. Instead, it focuses on opaque demands that are both abstract, unattainable, or demand extra-institutional measures that go against the separation of powers—for example, the demand that the Chief executive dismiss all charges against protestors. The single actionable demand—the retraction of the bill—has already happened.

Unplanned capitalist economies trend towards a bloated corporate finance sector, and this leads to the dysfunction of an extractive rentier economy. No amount of American or British flag-waving or appeal to a deluded colonial nostalgia will paper over this fundamental contradiction.

What are the problems in Hong Kong then, if not Beijing?

Economic factors: Unrestrained FIRE (Finance, Insurance, Real Estate) destabilizes society

Hong Kong is one of the most unequal places on the planet—a dystopian neoliberal state and tax haven that boasts of 93 billionaires, 14% poverty (over 20% child poverty) and the most

unaffordable real estate in the world. Up to 200,000 people live in literal cages—some as small as 16 square feet, and the majority of working-class families live in tiny partitioned apartments that are smaller than a parking space. This inequality, extreme inequality of income, shortage of housing fit for human habitation, and lack of hope is the basic tinderbox. This has to do with the failure of Hong Kong's model of political economy: a laissez-faire capitalist economy lacking basic taxation, captured by FIRE.

Institutional factors: Unresolved issues of colonization

Anti-Chinese secessionists, nativists, and independence activists in Hong Kong have monopoly of several powerful key institutions which bolster their power and aggravate the conflict: in particular, an extreme rightwing media empire, an educational system strongly influenced by colonial values and nostalgia, and which reproduces its values among the young, and certain sectors of the business/managerial classes allied with Western colonial values.

Cultural factors: Internalized colonization

Hong Kong residents also have cultural antagonisms dating from the colonial period.

At the time of the handover, Hong Kong was 30% of China's GDP, and Hong Kong citizens were entrained to believe they were semi-British – being the recipients of British culture and administration – and disdained the mainland Chinese. Many groups in Hong Kong were also refugees from Communism. Having copied and taken on, for decades, British class mannerisms and colonial values, as a sort of cultural surplus-value, and being valorized as the financial hub of Asia, Hong Kong citizens now find themselves at a lower rung of the global hierarchy: Hong Kong itself is now less than 3% of China's GDP.

When it served as a gateway to China, Hong Kong was essential – everything passed through Hong Kong: trade, ports, financing/investment, logistics, etc. It is now on a downward trajectory, a city-state whose prime has passed. At the same time, it is also dependent on China for basic survival: it gets its water, electricity, and most of its food from China. It also relies on trade and tourism from China. This fundamental contradiction: that Hong Kong cannot survive without China, but it disdains and rejects it based on implanted colonial values is a large part of the antagonism. (An analogy would be a foster child raised in a privileged family that has been reunited with its “lower-status” biological parent).

These are fundamental issues and contradictions around culture, values, and identity, that must be resolved over the long term, but will not yield to shibboleths around “freedom”, nor will they be transformed through violent shock therapy or foreign intervention.

Geopolitical Factors

Hong Kong and its protests are being used to attack, harass, and delegitimize China, as the US has designated China a “revisionist power” (i.e. national enemy) of the 21st Century in its National Security Strategy and National Defense Strategy.

China's key threat is the threat of a viable, non-western, non-imperialist, model of development. Hong Kong is one of a series of attempts by anti-China hawks in Washington to maintain a “global unipolar US hegemony” by interfering and manipulating the geostrategic chessboard, in particular by stoking violent dissent and separatism within China.

These extreme factions of the body politic, including key current and former members of the current administration, are openly, vociferously anti-China, blaming China for all the ills of the US, and openly agitating for direct confrontation with China.

The US people and Congress should avoid involving itself in this ugly partisan battle, making common cause with US hawks, Neocons, White Supremacists, and Hong Kong nativists and colonialists. It should avoid ineffectual grandstanding that can have no good outcomes for the Hong Kong people, US-China relations, the US, or the World.

The US Congress should base its legislative decisions on facts and discernment, not emotions or directed media campaigns.

And above all, it must oppose this legislation, as do the vast majority of peaceful and freedom loving people in Hong Kong, the US, and the world.