



Hong Kongers and the coloniality of British citizenship from decolonisation to 'Global Britain'

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journals.sagepub.com/home/csi**Michaela Benson** 

Lancaster University, UK

Abstract

In this article, the author advances understandings of *the coloniality of British citizenship* through the close examination of the status of the people of Hong Kong in Britain's immigration and nationality legislation. This is a case that has been overlooked in most social scientific analysis of Britain's citizenship–migration nexus. The article responds to Gurminder Bhambra's call to recognise the connected sociologies and histories of citizenship, and the analysis is informed by the close reading of historical changes in legislation – from decolonisation and the making of the British nation-state to the post-Brexit construction of 'Global Britain' – and what these have meant for the people of Hong Kong. In dialogue with scholarship focused on the enduring colonial ties in present-day citizenship and migration regimes, the article offers an analysis inspired by Manuela Boatcă's coloniality of citizenship and Ann Laura Stoler's understanding of exception by design: imperial forms of governance producing differential rights within national populations that position some populations as ambiguous. Conceptualising the status of Hong Kongers in British legislation past and present as *ambiguous by design*, the author questions what the rhetoric of the Hong Kongers as 'good migrants' for 'Global Britain', the narrative at the heart of the promotion of the bespoke Hong Kong British Nationals (Overseas) (HK BN(O)) visa launched in early 2021, conceals from view. As the author argues, rather than a case apart in the context of increasingly restrictive immigration controls, the renewal of Britain's obligations, commitments and responsibilities to the people of Hong Kong through this visa scheme provides further evidence of the enduring colonial entanglements in the formation of 'Global Britain' and its citizenship–migration nexus.

Corresponding author:

Michaela Benson, Department of Sociology, Bowland College, Lancaster University, Lancaster, LA1 4YT, UK.

Email: Michaela.benson@lancaster.ac.uk

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My grandmother was born in Hong Kong in 1928, the third child of the third generation of her family born in the (then) colonial city. A Cantonese speaker and Muslim resident of Hong Kong, for the first 20 years of her life she shared a status with other people across the British empire: British subject. She died a full British citizen, likely because of her marriage to my UK-born grandfather. Importantly, her acquisition of British citizenship was at odds with changes in British nationality and immigration legislation over the course of her lifetime. Others like her, including her siblings – British Chinese people born in Hong Kong in the first half of the twentieth century – had found themselves recategorised in British law four times: a protracted process in which they were repositioned as belonging to, but not part of, Britain; nationals without rights to full membership of the political community.¹ This brief sketch illustrates the dynamism of British nationality and immigration legislation, the historical contingencies of individual status and the linguistic, ethnic and religious diversity of British subjects at an earlier point in its imperial history.

In this article, I advance understandings of *the coloniality of British citizenship*, a concept that communicates enduring colonial entanglements at the heart of Britain's contemporary citizenship–migration nexus. I argue that it is through close observation of the production and transformation of the so-called 'residual categories' in operation in British nationality legislation – British Nationals (Overseas) (BN(O)), British Dependent Territories Citizens (BDTC) and British Overseas Citizens – that this is most evident. These legal statuses were granted to some populations in Britain's former colonies and overseas territories. Broadly, they confer their holders with a nominal status as British nationals, but without the right to reside in the UK, making them aliens for the purpose of the UK's immigration controls to this day.

I examine the BN(O) category, the status uniquely awarded to the people of Hong Kong when its sovereignty was transferred from Britain to the People's Republic of China (PRC) in 1997. Despite being one of the largest populations impacted by successive changes in legislation over the second half of the twentieth century, social scientific and legal analyses of the development of British nationality and immigration law have largely overlooked this case. The recent introduction of the Hong Kong British Nationals (Overseas) (HK BN(O)) visa – a bespoke route for *some* Hong Kongers to migrate to and settle in the UK, which opened for applications on 31 January 2021 – rests upon this residual status. The HK BN(O) visa is the latest chapter in the longer history of Britain's relationship to the people of Hong Kong. Close examination of changes in their status from colonisation, through Britain's decolonisation, to the Sino-British Joint Declaration (JD) and 1997, reveals a habitual and longstanding presentation of the provisions made for them as a case apart in the broader context of Britain's evolving citizenship–migration nexus, the Hong Kongers emerging as the perennial exception to the rule. The HK BN(O) visa is the latest articulation in this history of exception, these 2021 provisions being singled out as an example of the UK Government's 'fair and generous' approach

to immigration – seemingly at odds with an immigration regime that the government claim is ‘tough on immigration’.

I argue that we need to question what this discourse and rhetoric of exceptionality conceal from view. This is not an easy story to tell; along with many other people, part of me wants to believe that the HK BN(O) visa is, indeed, an exceptional act that offers hope not only to those seeking to leave Hong Kong SAR (HKSAR) in the context of continuing political oppression but also to those of us staunchly opposed to the increasingly exclusionary and brutal conditions of the UK’s migration governance, legislation and policy. However, by recognising the longstanding presentation of the Hong Kongers as exception, new sight lines onto the coloniality of British citizenship are opened which reveal that not all is as it seems.

In what follows, I recover historical Britain’s relationship to the people of Hong Kong from the margins to the centre to show how they have been transformed from British subjects to ‘good migrants’ for Global Britain. In this way, I make visible how Britain’s framings of its obligations, commitments and responsibilities to the people of Hong Kong have long been caught up in its pretensions and shifting position on the world stage, as well as in its diplomatic relations with PRC.

Decolonising citizenship (and migration)

My analysis is inspired by recent scholarship that shows how citizenship and the nation-state were forged at the expense of other peoples and places, reinforcing, exacerbating and institutionalising global inequalities in the process. On a very simple level, this scholarship shows that constructing a national political community necessarily requires the exclusion of others. The construction of nation-states, their borders and symbolic boundaries of belonging play a significant role in sustaining global asymmetries of power.

The vanguard of such scholarship was Ayelet Shachar’s (2009) work, *The Birthright Lottery: Citizenship and Global Inequality*, which laid bare the relationship between citizenship and the inheritance of property. She emphasised that both were circumscribed by birthright and framed as practices intended to restrict membership. In contrast to the presentation of citizenship as an inclusive leveller, she demonstrated the case for an alternative understanding that identified citizenship as a birthright privilege, where those born outside wealthy states were excluded from the privileges that accrue to citizenship of these states.

Taking a decolonial perspective, Manuela Boatcă and Julia Roth stress that citizenship and gender are ‘the most decisive factors in accounting for these extreme inequalities between individuals in poor and rich countries in the twenty-first century’ (2016: 198). They draw attention to the coloniality of citizenship to make visible the inequalities of race and gender established through colonialism that endure in the contemporary global citizenship regime, where not all citizenships are created equal. This tension continues in the present-day, colonial entanglements enduring in the way that European countries relate to their (former) colonial possessions (Boatcă, 2021b).

Reconceptualising citizenship and migration in these ways draws attention to the exclusions and dispossessions at the heart of the construction of citizenship and the national polity (Bhambra, 2015; Boatcă, 2020, 2021a). As Gurminder Bhambra

highlights, this makes it urgent to reconstruct sociological understandings of citizenship and migration:

[T]he exclusions and modes of subjugation that provided the context for the emergence of particular ideas of equal citizenship need to be recognized as integral to those forms today. . . . [C]itizenship itself needs to be rethought in the context of its wider history, its *connected histories* and *sociologies*, and new conceptual forms developed from those reconstructed accounts. (2015: 110, emphasis added)

Bhambra's (2014) connected sociologies approach, and Boatcă's (2021a) recent conceptualisation of the coloniality of citizenship foreground the struggles that produced the modern institution of citizenship. This was a process that cast aside some peoples, depriving them of rights and at the same time producing global inequalities that continue to drive migration in the present day (Boatcă, 2021a, 2021b; Boatcă and Roth, 2016). Quite simply, the sorting of the world's population into those with citizenship in wealthy nation-states, while those in the former and continuing colonial possessions are dealt a significantly worse hand, shapes the contemporary political economy of migration. As Lucy Mayblin and Joe Turner argue:

Colonialism continues to condition why, how and where people move, just as it shapes the forms of knowledge we have about what migration *is* . . . as well as the fact that colonialism produced the forms of racialized management that control 'migration'. (2021: 203)

Foregrounding the historical processes that have determined who is granted and who is deprived of citizens' rights offers a way to make newly visible the relationships between modernity and colonialism that underscore current articulations of citizenship.

While the global inequalities institutionalised through the production of nation-states are the headlines, this was a process that in some cases resulted in differential rights within those nominally cast as nationals, certain populations ambiguously positioned with some but not all the rights of citizens. As Ann Laura Stoler (2016) has argued, while presented as exceptions, those holding legal statuses that award them partial access to basic rights of membership and belonging are evidence of the continuation of imperial forms of governance. Writing about the processes that confer limited rights on some citizens in the United States, she traces the historical thread that links the exclusion of Native Americans from the polity to the limited rights of those born in its overseas possessions to highlight that exception is by design:

Imperial discourses have framed these as unique cases, but they are only 'exceptions' in a context in which such exceptions are a norm. Assuming that agents of empire were intent on clarifying borders, establishing 'order,' and reducing zones of ambiguity misses a crucial point. They were equally invested in, exploited, and demonstrated strong stakes in the proliferation of geopolitical gray zones, destabilizing and shattering the common sense of who belonged. (2016: 196)

The continuing differentiation within citizenship regimes and the ambiguities that this reproduces are a reminder of the ongoing colonial entanglements in today's citizenship

formations. In the next section, I sketch what thinking with the coloniality of citizenship offers to understandings of the construction, formation and institutionalisation of British citizenship and its others.

The coloniality of British citizenship and its others

When citizenship was first introduced into British legislation in the 1948 British Nationality Act (BNA 1948), it was imperial in its scope. At this time, my grandmother, born in Hong Kong, and my grandfather, born in Wiltshire (UK), shared a status as Citizens of the UK and Colonies (CUKC). For those born in the colonies, imperial citizenship included the right to free movement into the United Kingdom. However, as increasing numbers of citizens from the colonies started to arrive in the UK seeking work and accommodation, the Government established immigration controls to stem these population movements (Dummett and Nicol, 1990; Hampshire, 2005; Hansen, 2000; Karatani, 2003; Paul, 1997). From the 1962 Commonwealth Immigration Act onwards, immigration legislation made those from the colonies aliens for the purposes of immigration control, and deportable if they committed criminal offences in the UK. It was not until the 1981 British Nationality Act (BNA 1981), which repealed the right of such imperial citizens to enter and settle in the UK, that nationality legislation followed suit.

As Reiko Karatani (2003) emphasises, BNA 1981 offered the first (legal) definition mapping British citizenship exclusively onto the UK. Former Citizens of the Colonies were reclassified as British Dependent Territories Citizens (BDTC) and British Overseas Citizens (BOC). Importantly, these statuses granted them fewer attendant rights than those held by British citizens. It was through this act that my grandmother's four siblings became BDTC – Hong Kong being the largest of the dependent territories covered by this legislation. My grandmother, married to my UK-born grandfather but living in Hong Kong, had become a British citizen by that stage, a status that gave her enhanced rights in British law contingent on her personal circumstances. Her siblings would have none of these rights.

Randall Hansen (2000) argues that the citizenship categories introduced through the BNA 1981 – BDTC, BOC – sought to put an end to the legal ambiguity which meant that so-called citizens were migrants when they sought entry to the UK. Such categorical changes may have made the status of their holders less ambiguous for border guards and in the case of legal challenges, but they did little to reduce the ambiguity of a status that in name suggests citizenship but in practice offers limited or no access to the rights enjoyed by citizens. I argue that the reclassification of these citizens had the further effect of institutionalising the coloniality of citizenship that had already crept into British legislation through its earlier immigration controls. Indeed, the new categories introduced through BNA 1981 and later amendments follow a similar trajectory to those Stoler (2016) highlights in the US, in that these were ambiguous by design, and their origins in colonial practices of racial categorisation (see also El-Enany, 2020).

Examining Britain's citizenship–migration regime, Devyani Prabhat has argued that contemporary legal inequalities, and notably racial inequalities, reveal a 'legal archaeology of empire' (2020: 175). She also draws attention the work of 'exception' within this regime. In a context where commonplace understandings of British citizenship see it as

enduring and immutable, categorical changes in status are deemed exceptional but necessary (e.g. those brought to light by the Windrush deportation scandal, Brexit, and the consequent EU settlement scheme). As she argues elsewhere, ‘exceptional measures can become increasingly commonplace and result in control of new populations because of changing geopolitics and the re-assertion of national sovereignty’ (Prabhat, 2019: 215).

The colonial logics that recategorised those racialised others from Britain’s colonies as migrants reverberate through contemporary nationality legislation. As I reveal below, the ambiguous and exceptional status of Hong Kongers – past and present – is the example *par excellence* of the coloniality at the core of British citizenship.

Brexit and immigration reform: ‘Good migrants’ and the foundations of ‘Global Britain’

My grandmother died in 2015, just a year before the UK’s Brexit referendum. If she had been alive at the end of 2020, she would have lost the right to free movement within the European Union (EU) that she had enjoyed as a British citizen, but which had never been extended to her siblings who had no link to the UK. Once again, this signals the differentiated rights and entitlements institutionalised in British nationality legislation. While Brexit did not directly impact on the rights and entitlements of BN(O)s, the immigration reform brought about in its wake, the decade-long ‘Hostile Environment’ – the UK’s self-proclaimed ‘tough on immigration’ approach – and increasingly restrictive immigration controls set the stage for claims that the HK BN(O) visa is an exception to the norm.

The (marginal) success of the Leave campaign in the 2016 referendum on the future of Britain’s relationship with the EU was mobilised as the *vox populi* driving successive Conservative governments to deliver Brexit, framed as ending free movement. It is the legislation and measures taken to these ends, which are now celebrated as evidence of a ‘Global Britain’ that has ‘taken back control’ of its borders, that are particularly pertinent here, notably the Immigration and Social Security Coordination Act (EU Withdrawal) 2020 (ISSCA 2020). This repealed Freedom of Movement, laying the groundwork for citizens of EU member states seeking to enter the UK from 31 December 2020 onwards to be subject to the UK’s immigration controls. It has also been a vehicle for substantial and far-reaching immigration reform. The accompanying policy statement outlined a future points-based immigration system, which the UK Government presented as a way to make immigration a level playing field for people from all over the world. It included new concessions relating to income thresholds, lowered for those coming to the UK to work in shortage occupations and those with PhD level qualifications, and removed for those coming to work in the NHS and education (provided that they are paid in line with national pay scales). While it is presented by its advocates as levelling up, this supposed liberalisation of immigration in Britain has been achieved at the expense of the liberal approach to migration that underpinned free movement and which had exempted EU citizens from the UK’s immigration controls (and British citizens exempt from such controls in EU member states).² To my mind, this expanded scope of the UK’s migration legislation and policy signals that on balance it is better understood as levelling down.

The rationale and modelling that led to the production of ISSCA 2020 emphasise the benefits of controlled and circumscribed immigration to the British state and economy. Undoubtedly, some sectors of the labour market and individuals will find themselves judged to be on the right side of these new criteria. However, reducing migration to a process of balancing the books ignores how this has been shaped by political, social and ideological struggles. Recognising how it is caught up in these struggles sheds new light on the work that the image of the ‘good migrant’ for ‘Global Britain’, stripped back to questions of their value to the economy, whether through skill or income, might be doing. Such individuals are welcomed as contributors to Britain’s post-Brexit prosperity but in return receive few to none of the protections awarded to citizens, often with no recourse to public funds and their access to the National Health Service (NHS) contingent on paying a surcharge.

As Members of Parliament debated the bill which would become ISSCA 2020, simultaneous parliamentary discussions were ongoing about what the British Government should do for the people of Hong Kong in consequence of Chinese reforms in the region.

The Hong Kong BN(O) visa in context

In July 2020, judging the imposition of the National Security Law in HKSAR as ‘a clear breach of the 1984 Sino-British Joint Declaration’ (Home Office, 2020: foreword, para. 2), the Home Office released a policy statement that altered the entitlements of BN(O)s by announcing changes to migration legislation and policy to introduce a bespoke visa route. While the immigration bill had been fiercely contested, there was an extraordinary degree of cross-party and cross-house support for the UK Government’s plan to provide a route to residency and citizenship for the people of Hong Kong.

The HK BN(O) visa, introduced on 31 January 2021, is a designated immigration route for BN(O)s ordinarily resident in HKSAR, the UK, Jersey, Guernsey and the Isle of Man (and their dependants) to live, work and study in the UK. The status of British National (Overseas (BN(O))), on which eligibility for this new visa rests, was introduced through amendments to the 1981 British Nationality Act as a result of the JD. This status was the solution developed to accommodate those residents of Hong Kong who would automatically become Chinese citizens on 1 July 1997.³ It was a closed category, explicitly not transferrable to descendants, attesting to the British nationality of its holders and their right to residence in Hong Kong, but excluding them from right of abode in the UK.

At the time of writing, the HK BN(O) visa gives BN(O)s relatively favourable terms of settlement by comparison with those seeking entry into the UK through standard immigration routes. Its bespoke character makes it one of a handful of work visas and exemptions with different conditions from standard work visa routes (the longstanding UK Ancestry visa is most similar in terms of its provisions and route to settlement). The eligibility criteria for the new visa rely on applicants being able to demonstrate that they can accommodate and support themselves in the UK for six months and that in addition to the visa fee they can cover the Immigration Health Surcharge. Unlike other migration routes there is no requirement for a minimum or guaranteed income. Applicants can apply from the UK or HKSAR, for a fee of £180 per applicant for a 30-month visa or £250 per applicant for a 5-year visa. The Immigration Health Surcharge is set at £1560 for 30 months and £3120 for five years,

with reduced charges for those under the age of 18. In line with current legislation, the policy statement also makes clear that after 5 years in the UK on the HK BN(O) visa, BN(O)s will be able to apply for Indefinite Leave to Remain (ILR). After a year with ILR status, they will become eligible for citizenship by entitlement.

Prior to the introduction of the scheme, the UK's Border Force officers had been issued with guidance permitting them to grant 'Leave Outside the Rules' to BN(O)s, a provision that was extended until the route became fully digital. Between 5 July 2020 and 13 January 2021, approximately 7000 BN(O)s and their dependants entered through this route (Home Office News Team, 2021). Estimates of the number of people who might be eligible for this scheme range from the publicly announced figure of 2.9 million people eligible for BN(O) passports (Home Office News Team, 2021), to the 5.4 million people with BN(O) status (including family members who normally live with them) in the Home Office Impact Assessment.⁴ However, this leaves a substantial population in Hong Kong, whose current population is 7.5 million – including many of those born after 1997 – ineligible for this scheme. The policy statement acknowledges that those without BN(O) status are beyond the scope of the visa and draw attention to the existing routes in the UK's managed migration regime that remain open to non-BN(O) citizens of HKSAR. For younger HKSAR citizens, the demographic disproportionately involved in Hong Kong's pro-democracy uprisings, they stress that the Tier 5 Youth Mobility Scheme remains open. But as Elsa Oommen (2020) has pointed out, this is a time-limited visa (2 years) that explicitly precludes settlement and relies on bilateral arrangements between the UK and HKSAR. As such, it is not comparable with the new terms offered to BN(O)s seeking residence in the UK. For younger protestors without BN(O) status, for whom this new route to settlement is largely out of reach, their available options include applying for asylum or entering the UK through its standard immigration routes.

As with many other immigration routes, the cost of entry will limit the number of people who take advantage of it. Perhaps unremarkably, it will be wealthier and older HKSAR residents who can afford the initial fees. One concession that might offset this upfront cost is that it allows those in possession of the visa but on a low income to apply for access to benefits to meet housing need, essential living costs and child well-being, a provision supported through the Hong Kong BN(O) integration programme, a dedicated support package of £43 million. By the end of June 2021, 64,900 applications had already been made this visa scheme (Home Office, 2021).

The HK BN(O) visa and its relatively generous provisions stand out as significant exceptions in the wider context of an increasingly restrictive immigration regime. As I discuss in more detail below, rethinking the Hong Kongers' exceptional position in Britain's current citizenship–migration nexus in the context of the longer history of their status in immigration and nationality law makes visible the coloniality of the transformations in British citizenship.

Recategorising the Hong Kongers through transition

It is almost a cliché to stress the exceptionality of Hong Kong. Its much-lauded economic success meant that 'the region had become more economically advanced than most independent countries' (Carroll, 2007: 7) by the time its sovereignty was handed

over to PRC in 1997. An awkward exception to the norms and seeming to run counter to prevailing analyses, colonial Hong Kong has been largely absent in studies of British imperialism. In Britain's other colonies, Britain's decolonisation – the political process through which it shifted from empire to nation-state – was caught up with local struggles for independence and sovereignty that meant that most of Britain's former territories became independent states. Self-determination was never on the cards for Hong Kong. Through the Convention of Peking, the New Territories were leased to Britain for a time-limited period of 99 years. But it was how the New Territories were managed in British law – as a territorial extension of Hong Kong and its jurisdiction – that called the long-term future of the colony into question and laid the foundations for sovereignty of the region to be transferred to China once the lease was up (Tsang, 2007). Even at the Sino-British negotiations over the future of Hong Kong taking place in the 1980s, the Hong Kongers did not have a seat at the table. This makes Hong Kong an ambiguous case; as such it rarely features in mainstream scholarship focused on Britain's decolonisation. But it is the fact that Hong Kong is also largely unremarked upon in research focused on the development of immigration and nationality law in the UK (see Jowett et al., 1995; Mark, 2019 for notable exceptions) that is of particular interest to me here.

At key moments past and present, Britain's relationship with and obligations to the people of Hong Kong have been upheld as exceptional. The 1962 Commonwealth Immigration Act introduced immigration controls for Hong Kongers, along with other CUKCs born outside the UK. Nevertheless, the preferential quota of Hong Kongers issued with work vouchers that allowed them to live and work in the UK in the late 1960s meant that they accounted for 1500 of the 4000 vouchers issued to non-patrial citizens (Dummett and Nicol, 1990: 206).

In what follows, I recover Britain's relationship to the Hong Kongers as rendered through BNA 1981, in the wake of the 1989 Tiananmen Square massacres, and through the negotiations over the future of Hong Kong that resulted in the JD and paved the way for the 'one-country, two systems' solution and the development of the Basic Law, HK's *de facto* constitution. In this way, I lay bare the continual reworking of the Hong Kongers' exceptional status in British immigration and nationality law.

Hong Kongers and the 1981 British Nationality Act

My entry point is the BNA 1981. At the time that the bill that would lead the establishment of this act was making its way through the parliamentary process, Hong Kong was the largest of Britain's remaining dependent territories with the result that its non-patrial CUKCs constituted the majority of those reclassified as BDTCs. Casting former colonial citizens as 'other' was integral to Britain's new political project of belonging in the post-decolonisation era. As Karatani concludes, '[t]he main purpose of the act itself was only to link the legal status of British citizenship with the right of entry and abode' (2003: 185), a process that denied such access to its racialised citizens. While Britain decolonised, British citizenship did not.

Writing in 1981, Ann Dummett of the Joint Council for the Welfare of Immigrants (JCWI) commenced her critique of BNA 1981 by highlighting concerns originating in other parts of the empire about this reformulation of nationality:

It is because they have recognised this underlying isolationist character of the Act that two dependencies in particular, Hong Kong and Gibraltar, have been vehemently opposed to it. Their governments have strong political reasons for wanting to appear British in their neighbours' eyes, and their objections have related less to specific provisions than to a sense of rejection, of distance replacing close association. (Dummett, 1981: 233)

As Chi-kwan Mark (2019) stresses, for Hong Kong's elites investment in changes to British nationality legislation at this time was about their stake in the future of the region. By lobbying the UK Government to protect the rights of Hong Kong citizens, they hoped to remind Britain of its obligations. Advocating for continued political and economic autonomy of the region post-1997, these elites were aware that they needed Britain to take up this baton if they were to have any chance of success. As such, the introduction of the new legal status of BDTC, introduced by the BNA 1981 in advance of the Sino-British negotiations, was an unwelcome signal that the UK was further distancing itself from its obligations to the people of Hong Kong (see also Jowett et al., 1995).

Writing after the completion of the Sino-British negotiations, Dummett and Nicol (1990) further considered the significance of Hong Kong in the development and implementation of BNA 1981. As they stressed, '*No British politician* was ready to consider a redefinition of British nationality which would give right of abode in the United Kingdom to the 2.6 million British Chinese in Hong Kong' (1990: 242, emphasis added). British politicians feared that extending the right of abode to Hong Kongers would result in mass and uncontrollable migration from the region in anticipation of China's sovereignty. As such, the fate of Hong Kongers in British nationality law was caught up in the politicisation of migration in Britain at that time.

From the Chinese perspective, the fact that Hong Kongers were Chinese nationals shaped this decision. If the UK had issued full British citizenship to the Hong Kongers, as Portugal had done in the case of Macao (Mendes, 2013), the forthcoming negotiations might have taken a different turn. The ink was barely dry on BNA 1981 when the Sino-British negotiations commenced. In consequence of the JD, the prior status of BDTC was superseded by that of BN(O) on 1 July 1997.

BN(O) status was little more than a nominal shift in British nationality law, offering no more, no less than had the previous BDTC status. It gave those eligible a passport but made clear that they had no right to abode in the UK, leaving them subject to British immigration control should they seek residence and employment there. It offered them access to British consular assistance when travelling to a third country – i.e. not China or Hong Kong. As it was a closed, non-transferrable category, it was anticipated that Britain's obligations to the region's residents would gradually die out. As such, the establishment of BN(O) status trod a fine line between Britain's continuing obligations to its former subjects and China's pending sovereignty of the region.

Ambiguity by design

But later that decade the ambiguity of this legal status would be shown up for what it was. In 1989, the imposition of martial law in Beijing that led to the Tiananmen Square massacre was deeply felt among the people of Hong Kong. They took to the streets to

express their opposition to Beijing's actions, the largest demonstrations the colonial city had ever seen. Their chants – 'Today China, Tomorrow Hong Kong' – made visible their anxieties about Hong Kong's future.

For Dummett and Nicol (1990: 249–251), the British Government's response to these events was particularly revealing:

By defining certain people as British, while denying them the rights associated in international practice with nationality, the British Government tried to have things both ways, to look as though obligations were being honoured while intending not to honour them. When the test came, in June 1989, with the Tiananmen [*sic*] Square massacre in Beijing, and the subsequent demand from the people of Hong Kong for British citizenship with right of abode in the United Kingdom, the weakness of this attempt was exposed. (Dummett and Nicol, 1990: 251)

While the British Government had repealed the BDTIC status of Falkland Islanders and Gibraltarians, replacing this with British citizenship permitting the right to abode in the UK, this would not be the outcome for the people of Hong Kong. Instead, the concession the Government made was to introduce the British Nationality (Hong Kong) Act (1990). This offered full citizenship – and, with it the right to abode in Britain – through a points-based scheme for up to 50,000 (of a possible 2.6 million) Hong Kong citizens deemed essential to the colony's continuing economic success. For historian Kathleen Paul (1997: 186) the logic behind this was cynical. The emigration of Hong Kong citizens in the wake of the Tiananmen Square massacre (notably, to Australia, Canada and New Zealand) was seen as a potential threat to Hong Kong's economy. As Jowett et al. (1995) stress, the Government was keen to highlight that this provision was not an immigration bill. Rather, offering 'passports to stay' the British Government hoped that key personnel would continue to service the colony until 1997.

Hansen (2000: 218) interprets this exceptional provision as offering a counter-narrative to claims that British nationality law was becoming increasingly restrictive. However, the comparison between the inclusive provisions made for the white British populations of the Falklands and Gibraltar and the exclusive provisions made for the British Chinese of Hong Kong exposes the sharpening of racial lines, making visible once more the racialised and classed hierarchies in British nationality legislation (Dummett and Nicol, 1990; Paul, 1997).

Through the convergence of changes in British nationality law with the transfer of sovereignty of the region to China, Hong Kongers were recategorised as nationals not citizens. By the time the BN(O) status was introduced, only one of my grandmother's siblings was left in Hong Kong. All the others had emigrated through family reunion (joining their children who had settled overseas) to Australia, Canada, and (in my grandmother's case) the UK. Her one brother remaining in Hong Kong woke up on 1 July 1997 as BN(O).

I argue that the BN(O) classification attested to Britain's continuing obligations to its former citizens while sending a strong signal – both to its holders and to the PRC – that they were not considered part of Britain. In what follows, I consider how the revitalisation of Britain's interest in the Hong Kongers and its responsibilities to them in the present-day is similarly caught up in questions of global political economy. In this way, I

call into question the seeming exceptionality of concessions developed in British migration policy to accommodate those holding the status of British National (Overseas).

Britain and the Hong Kongers from handover to post-Brexit

While Hong Kong and its people appeared in early scholarship that evaluated the development of the BNA 1981, it is notable that in later literature they become increasingly marginalised, appearing only in footnotes or sparingly in the texts. Similarly, after 1997 Hong Kong and its residents largely slipped out of sight of British politicians, parliamentarians and policy makers.

British reactions to developments in HKSAR

[A]n ongoing series of controversies over political and constitutional reform and the 79-day ‘Occupy’ movement in Hong Kong in autumn 2014 brought the city’s politics back to international attention *in a way not seen since 1997*. (Summers, 2016: 2, emphasis added)

Over the course of the 2010s, political protest in Hong Kong drew international attention and with it the renewed interest of the UK Government. As Tim Summers (2016) identifies, the six-monthly reports on the development of Hong Kong under Chinese sovereignty produced by the Foreign and Commonwealth Office (FCO) from 1997 onwards offer a way to trace how their position on Hong Kong has evolved over time. While at various points since 1997 these reports identified some cause for concern (see also Yahuda, 2007), 2014 was a turning point.

Since 2014 the FCO’s reports have expressed increasing concern, most notably about the intensification of political debate in HKSAR in response to political and constitutional reform and the dogged issue of universal suffrage. Following a series of events including the involuntary removal of bookseller Lee Po to mainland China without due process under HKSAR law, the second report of 2015 identified grounds for concern about whether the rights and freedoms guaranteed by the JD were being maintained. From 2016 onwards, the reports document the UK Government’s escalating concerns about the restriction of the basic freedoms of the people of HKSAR. I stress here the PRC’s response to these reports, which has in recent years escalated from statements of disapproval, to repeated reminders that the JD is a historic document that gives the UK no power to supervise or monitor its affairs in Hong Kong, and an explicit reprimand of the UK Government for foreign interference in internal affairs.

The escalation of political and constitutional reform in HKSAR since 2019 has not passed unremarked in the UK. From the extradition law to the imposition of the National Security Law, the FCO’s six-monthly reports document the PRC’s actions and how Beijing’s imposition of legislation undermines autonomy and democracy in HKSAR. They report politically motivated arrests and police brutality towards protestors. In this way, from 2014 onwards, the FCO’s reports laid a trail highlighting how China’s actions might constitute a breach of the JD. They also began to lay the groundwork for Britain’s potential response if and when new legislation was introduced.

The foreword to the six-monthly report on Hong Kong published in November 2020 explicitly condemns the recent imposition of the National Security Law on the grounds that it undermines the ‘One Country, Two Systems’ framework:

Through the imposition of the National Security Law, China has failed to live up to its international obligations with respect to Hong Kong. The UK Government has responded with a series of reasonable and proportionate measures, which reflect our vital interests and our long-standing commitments to the people of Hong Kong. (FCDO, 2020: 4, para. 3)

The measures laid out include the HK BN(O) visa, the extension to HKSAR of the arms embargo, the suspension of the extradition agreement with Hong Kong and ongoing discussions about whether British judges should continue to sit as non-permanent judges on the Hong Kong Court of Final Appeal. That alongside these other measures the bespoke visa was first mooted by the FCO rather than the Home Office shows how it is caught up in the foreign policy, notably the UK’s China and Hong Kong policies. The UK Government’s responses to events in HKSAR, as Summers (2021) argues, were reactionary rather than strategic, marking a shift from a foreign policy approach grounded in interests, to one organised around values.

Recent discussions about Hong Kong in the UK parliament also demonstrate this: the rights and freedoms of the people of Hong Kong have been raised alongside human rights abuses in China – most significantly those directed towards the majority Muslim population of the Xinjiang Uighur Autonomous Region – and calls for international intervention. The timing of the announcement of the UK’s measures also coincided with the decision to strip Huawei, the Chinese telecoms firm, of involvement in the UK’s 5G network. I state this here to demonstrate the escalation of tensions in Sino-British relations; Britain’s approach to China is increasingly hostile, the rights of Hong Kongers a pawn within them.

Such foreign policy considerations are important in demonstrating the different scales and relationships in which concerns over HKSAR are caught up; they also highlight the undoubtedly geopolitical issues that have led to the emergence of this bespoke visa route.

Hong Kongers and Brexit Britain’s immigration controls

While this history is briefly sketched, my intention here is to demonstrate the political and ideological struggles that might help to make sense of the UK Government’s recent concessions for those with BN(O) status. To do so is not to excuse, or to divert attention from urgent questions of democracy in the PRC and HKSAR, but to ask instead what the UK Government’s involvement reveals about ‘Global Britain’.

What it shows is how an anachronistic and ambiguous legal status, an afterlife of empire that until now had been glaringly empty of significance for its holders, has been infused with new meaning. Indeed, in the debate over the new plan for immigration, Home Secretary Priti Patel held up the HK BN(O) visa as evidence of the Conservative Government’s ‘fair and generous’ approach to immigration:

From the expulsion of Ugandan Asians . . . to supporting campaigners fleeing political persecution in Hong Kong – that is the record of Conservatives when it comes to humanitarianism. Under the Conservative leadership of this Government, the United Kingdom will always

provide sanctuary to people who are having the light switched off on their own liberty and personal freedoms, and this new plan will build on that. (HC (24 March 2021) 691: 922–923)

Simply, the claim is that the government is morally obliged to offer this route in the light of the PRC's actions in HKSAR. This justifies the introduction of exceptional measures that exceed ordinary routes to immigration. As I outlined previously, exception has always been the norm when it comes to Britain's relationship with the Hong Kongers. The HK BN(O) visa is framed as Britain providing a haven for its former colonial subjects – at times referred to misleadingly (if tellingly) as BN(O) citizens – but has undoubtedly colonialist overtones. Indeed, this point is not lost on some of those on the ground in Hong Kong: 'The response in Hong Kong was mixed, with some welcoming the announcement and others criticising the UK for interfering and for its lack of confidence in Hong Kong's future' (Summers, 2021: 7).

I argue against taking on face value the idea that the HK BN(O) visa is an exception. Instead, attention should be turned to the role that the discourse and rhetoric about this new bespoke route play within the Hostile Environment. Its timing makes the HK BN(O) visa the ideal poster child for a 'Global Britain' that has 'taken back control' of its borders. Government announcements and media reports about the scheme recycle long-standing stereotypes that present the Hong Kong Chinese as hardworking and entrepreneurial, a ready-made model minority who should be welcomed with open arms. As Jeevan Vasagar wrote in a recent opinion piece,

... the 'good migrant' narrative coalescing around the Hong Kong Chinese is risky for them as well as for other British people of colour. The impulses behind this narrative combine the imperial nostalgia that helped power Brexit, an importing of US conservative politics, and a racialised caricature of why the Asian tiger economies – Hong Kong, Taiwan, Singapore and South Korea – have been so successful. (2021; see also Pang, 2021)

In a context where the UK Government is keen to demonstrate it has 'taken back control', the scope of this visa is unusual. A bespoke scheme such as this demonstrates that the Government is now in a position to choose which particular migrants will be beneficial to 'Global Britain'. The choice to extend these provisions to a population whose status is evidence of the coloniality of British citizenship points to the persistence of colonial entanglements of post-Brexit Britain.

Beyond the concession in immigration law that this represents, offering these provisions additionally allows Britain to flex its muscles on the international stage. I argue that these provisions are thoroughly entangled with Britain's shifting position on the world stage in consequence of Brexit, while also carefully balancing the JD. Indeed, the discursive wrangling accompanying the introduction of this visa that emanates from both China and the UK, which is broadcast through an array of domestic (UK, Hong Kong and China) and international media channels, illustrates what may be at stake.

Conclusion

British immigration and nationality legislation have long been sites of colonial entanglements. Since the 1960s, through policy and legislation, a near continuous process of

redefining who is a migrant and who is a citizen has been taking place. This meant that my grandmother's siblings had their rights in British law eroded long before 1997. To my mind, there is no end to this process in sight. Coloniality remains at the core of Britain's citizenship–migration nexus. As sociologists of citizenship and migration, we need to shift our gaze to the historical production of contemporary citizen–migration regimes and global inequalities. In a context in which former citizens have been made into migrants, how might this shift our understandings of the routes to social justice for these populations?

Returning to the Hong Kongers, I argue that we need to question what the presentation of this case as exceptional conceals from view. On the surface, the HK BN(O) visa scheme appears to contradict the broader context of the 'Hostile Environment' and contemporary immigration reform; it is only by unpicking the coloniality of British citizenship that this may be revealed as otherwise. It is a reminder of how imperial forms of governance underscore present-day legislation; the HK BN(O) visa is a small concession with limited effect for those whose status has been constantly downgraded.

Beyond this, the ambiguity by design of the BN(O) status meant it could be infused with new significance in the context of a growing crisis in the Sino-British relationship, giving rise to the HK BN(O) visa. This revitalisation of Britain's interest in its self-claimed moral responsibilities, obligations and commitments to the people of Hong Kong has further significance in the context of Britain's post-Brexit position on the world stage. Through this lens, its provisions for the Hong Kongers emerge as the exception that proves the rule that Britain has taken back control of its borders and is able to pick and choose who might be 'good migrants' for 'Global Britain'.

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ORCID iD

Michaela Benson  <https://orcid.org/0000-0003-0400-5741>

Notes

1. The 1948 British Nationality Act (BNA 1948) recategorised Hong Kong's British subjects as Citizens of the UK and Colonies (CUKC). Through the Commonwealth Immigration Act

- 1962, the right to abode in the UK was removed from those CUKCs from Hong Kong, as they were made aliens for the purposes of immigration control. Through the 1981 BNA they were recategorised as British Dependent Territories Citizens (BDTC) and then as British Nationals (Overseas) when sovereignty of Hong Kong was transferred from Britain to the PRC in 1997.
2. As I have written elsewhere (Benson, 2021; Benson and O'Reilly, 2020; see also <https://brexitbritsabroad.org>) the 1.2 million British citizens living in the EU who benefited from Freedom of Movement are a lesser known in the story of migration and Brexit.
 3. Non-ethnic Chinese residents were able to apply to become British Dependent Territories Citizens (BDTC) if they did not already hold this status.
 4. This impact assessment is publicly available at: www.legislation.gov.uk/ukia/2020/70/pdfs/ukia_20200070_en.pdf

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Author biography

Michaela Benson is Professor in Public Sociology at Lancaster University. She is particularly known for her research into Britain's relationship to its emigrants and overseas citizens at moments of major political transformation including Brexit and decolonisation. She is the author of *The British in Rural France* (Manchester University Press, 2011; shortlisted for the British Sociological Association's Philip Abrams Memorial Prize 2012) and *Lifestyle Migration and Colonial Traces in Malaysia and Panama* (co-authored with Karen O'Reilly; Palgrave, 2018) and has published journal articles in leading sociology, geography and migration studies journals. Her research has been funded by the ESRC and British Academy.

Résumé

Dans cet article, je propose une interprétation de la colonialité de la citoyenneté britannique moyennant un examen minutieux du statut des habitants de Hong Kong dans la législation britannique sur l'immigration et la nationalité – un cas qui n'a guère été pris en considération dans la plupart des analyses en sciences sociales portant sur le lien établi par la Grande-Bretagne entre citoyenneté et migration. L'article répond à l'appel de Gurminder Bhambra à reconnaître les sociologies et histoires connectées de la citoyenneté, à partir d'une analyse reposant sur une lecture attentive des changements intervenus dans la législation au cours de l'histoire – de la décolonisation et de la création de l'État-nation britannique à la construction de la *Global Britain* à l'issue du Brexit – et de ce que cela a signifié pour les habitants de Hong Kong. Faisant écho à la recherche axée sur les liens coloniaux qui persistent dans les régimes de citoyenneté et de migration actuels, je propose une analyse inspirée par la colonialité de la citoyenneté de Manuela Boatcă et la conception d'Ann Laura Stoler de l'exception délibérée – les formes impériales de gouvernance ayant produit des droits différentiels au sein des populations nationales qui ont placé certaines populations dans une position ambiguë. En conceptualisant le statut des Hongkongais dans la législation britannique passée et présente comme délibérément ambigu, je m'interroge sur ce qui se cache derrière la rhétorique consistant à présenter les Hongkongais comme de « bons migrants » pour la *Global Britain*, une rhétorique qui se trouve au cœur de la promotion du visa sur mesure lancé début 2021 à l'attention des Britanniques d'outre-mer hongkongais. Dans un contexte de contrôles de l'immigration de plus en plus restrictifs, plutôt que de considérer comme un cas à part le renouvellement des obligations, engagements et responsabilités de la Grande-Bretagne à l'égard des habitants de Hong Kong par le biais de ce système de visa, j'explique qu'il constitue une preuve supplémentaire des enchevêtrements coloniaux durables à l'œuvre dans la formation de la *Global Britain* et du lien qu'elle établit entre citoyenneté et migration.

Mots-clés

Citoyenneté britannique, colonialité de la citoyenneté, Hong Kong, lien entre migration et citoyenneté, passeport britannique d'outre-mer pour les Hongkongais, sociologies connectées

Resumen

En este artículo se avanza en la comprensión del colonialismo de la ciudadanía británica a través del examen detenido del estatuto de los habitantes de Hong Kong en la legislación sobre inmigración y nacionalidad de Gran Bretaña, un caso que se ha pasado por alto en la mayoría de los análisis de las ciencias sociales sobre el nexo entre ciudadanía y migración en Gran Bretaña. El artículo responde a la apelación de Gurminder Bhambra (2015) a reconocer las sociologías e historias conectadas de la ciudadanía, a partir del análisis basado en la lectura atenta de los cambios históricos en la legislación, desde la descolonización y la creación del Estado-nación británico hasta la construcción de la “Gran Bretaña global” a raíz del Brexit, y lo que esto ha significado para los habitantes de Hong Kong. A partir de la investigación centrada en los lazos coloniales que persisten en los regímenes de ciudadanía y migración actuales, se propone un análisis inspirado en el colonialismo de la ciudadanía de Manuela Boatcă (2021a) y la concepción de Ann Laura Stoler (2016) de la excepción deliberada (las formas imperiales de gobernanza han producido derechos diferenciales en el seno de poblaciones nacionales que han colocado a algunas poblaciones en una situación ambigua). Al conceptualizar el estatus de los hongkoneses en la legislación británica pasada y presente como deliberadamente ambiguo, me pregunto qué se esconde detrás la retórica que presenta a los hongkoneses como “buenos inmigrantes” para la Gran Bretaña global, una retórica que se encuentra en el corazón mismo de la promoción del visado a medida de los ciudadanos británicos de ultramar hongkoneses lanzado a principios de 2021. Tal como se sostiene, en lugar de un caso aparte en el contexto de controles de inmigración cada vez más restrictivos, la renovación de las obligaciones, compromisos y responsabilidades de Gran Bretaña con el pueblo de Hong Kong a través de este esquema de visados proporciona una prueba más de los entresijos coloniales que persisten en la formación de la “Gran Bretaña global” y su nexo entre ciudadanía y migración.

Palabras clave

ciudadanía británica, colonialismo de ciudadanía, Hong Kong, nexo entre migración y ciudadanía, sociologías conectadas, pasaporte británico de ultramar para hongkoneses