



True North in  
Canadian public policy

# Straight Talk

May 2019

## *Straight Talk with Martin Lee*

**China has over time sought increasingly to weaken and undermine Hong Kong's prized institutions, most recently through the Hong Kong government's push for an extradition agreement with mainland China. In this edition of MLI's Straight Talk, we spoke with distinguished Hong Kong democracy activist Martin Lee. Lee provides a detailed look at the dangers posed by the proposed extradition agreement with China and why Canadians should be concerned. This publication is based on a transcript of a recent discussion between MLI Senior Fellow Charles Burton and Martin Lee on an episode of MLI's Pod Bless Canada Podcast.**



Known as the “Father of Democracy” in Hong Kong, Martin Lee was an elected member of the Legislative Council from 1985 to 2008. He served as chairman of the Hong Kong Bar Association from 1980 to 1983 and took part in the discussions over Hong Kong's 1997 handover from the United Kingdom to China, joining the Basic Law Drafting Committee in 1985. He continues to fight for democratic protections and is the territory's top barrister and Senior Counsel taking on significant cases to protect the rule of law and the rights of political activists in Hong Kong.

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**MLI:** I'm here with the distinguished Hong Kong democracy activist Martin Lee to discuss civil liberties in Hong Kong and the threat that Beijing poses to them. Over the past more than 30 years, Mr. Lee has been a prominent advocate for democracy and human rights in Hong Kong. For the first question, I wanted to ask what you hope to accomplish through this visit to North America that you're currently engaged in.

**Martin Lee:** Well, we want to tell the Canadians and the government what's been happening in Hong Kong – and it is unfortunately bad news. The 1984 *Sino-British Joint Declaration* signed between Britain and the People's Republic of China is not being honoured in a number of ways. But the most recent one, which gave us a lot of concern and should give Canadians a lot of concern, is the Hong Kong government's attempt to push through the Hong Kong legislature a bill that would cause problems on extradition.

Throughout these years, the Hong Kong government has not reached any agreement with mainland China on rendition. That is a similar word to extradition, except that extradition is between different countries and rendition is between different parts of the same country, e.g., if there is any fugitive offender in Hong Kong that committed a criminal offence in the mainland, and mainland China wants the person sent back to mainland China to be prosecuted there. Then there would be a request from mainland China to the Hong Kong government, and the person would then be sent back to mainland China when certain evidence is put before our courts. It's not a lot of evidence. It's only what we call *prima facie* evidence.

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There is no such arrangement with China for one simple reason. We don't believe the standard of the judicial system is good enough. In other words, we don't trust the system. That is why we don't want our people to be sent back to China to face a trial there. Before the handover there was no problem, because the British government never signed an extradition treaty with China, and even today, there is no extradition treaty between China and Britain, or between China and Canada. After the handover, when Hong Kong became a Special Administrative Region of China, Beijing actually consented to Hong Kong entering into extradition agreements with countries like Canada. China could not persuade the Canadian government to make an extradition treaty between the two countries, but Ottawa trusted the Hong Kong judicial system.

For many years now there was no such arrangement with mainland China, but recently, there is a case involving a Hong Kong young man who went to Taiwan with his girlfriend, and he murdered his girlfriend in Taiwan and then returned to Hong Kong, and he was arrested in Hong Kong, and the Hong Kong courts have no jurisdiction over the murder charge. They convicted him of certain related offences, which are minor in nature, comparatively of course.

The Hong Kong government took advantage of this situation and claimed that it would be wrong for Hong Kong to remain a haven for criminals, and therefore wanted to change a law so that fugitive offenders would then be sent back to mainland China, as well as Taiwan.

Taiwan is in fact more acceptable to Hong Kong, because their judicial system is not bad, certainly much better than in mainland China. It could be done by changing the law somewhat to allow, on a case-to-case basis, this particular individual to be simply transferred to Taiwan for trial for murder there. The Hong Kong

government didn't want to take that route, even though it was clearly possible and would not have met with any opposition from other political parties. They deliberately picked this opportunity as a pretext, we believe, to open our doors to the transfer of offenders to mainland China, where the system of law is not to be trusted. That is why there's a lot of opposition.

Now, why is it a concern of the Canadian government? It is because there are 300,000 Canadians living or working in Hong Kong, and that is the official figure. The unofficial one, we believe, is well above half a million. Something could go wrong, and then one of these Canadian citizens could be transferred back to China for trial, and that would pose an immediate problem to the Canadian government.

You've got to be sure that they're well treated in China, but, of course, how can you guarantee that? We know from experience that once a person is transferred back to China or gets arrested in China, the authorities are very good at getting confession statements out of you. Within two weeks, you will probably make a confession statement before a TV camera, and then you will be made to confess to whatever crime they want you to commit to. That's a problem right away.

Since we don't trust the system, we don't think that should be done in Hong Kong now. The Hong Kong government claims that this is important. It has to be done right away, and they actually said that it should be done certainly before July, if not before the end of May. There's great urgency in this. That's why we have come here to warn your government that it really should do something about it. We should not allow this terrible bill to be passed, and that the Hong Kong government should withdraw the bill.

After Canada, we're going to the US with the same message, and hopefully with enough international support to our cause, the Hong Kong government will then withdraw the bill. That's why we are here.

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**MLI: I noticed in the Canadian-Chinese press that you also referred to another violation of the *Basic Law* – specifically, the customs procedures of the Kowloon West high speed railway station. Could you discuss why you think that that is such a serious matter in terms of the maintenance of civil liberties and democracy in Hong Kong?**

**Martin Lee:** Alright, this will be another long answer. You should know this, because you've got similar arrangement – not the same, but a similar arrangement with the Americans.

If I fly over say to Toronto from Hong Kong, and then after leaving my plane I go through customs check on the Canadian side, and immediately I go over to another checkpoint, the US officials will be there, correct? It's a very handy way of going through customs and immigration in one location, rather than two. In Hong Kong, because we have now joined part of this express rail that would take us all the way to Beijing, it certainly is convenient to do these checks in one location, which the Hong Kong government suggested to be in the heart of the Hong Kong area in the terminal in Western Kowloon.

I have no problem with that, but the way they went about it was clearly awful. Okay, now there are these four storeys within this rail terminal, and what they did was to say: to make it easier for everybody, we will turn that area into part of the mainland, so that instead of Hong Kong laws applying to that area like the rest of

Hong Kong, the Chinese law will then apply. All the Chinese laws will be imported, and the Chinese laws would displace our Hong Kong laws.

If you happen to be there, and you are involved in a fight with somebody, now the Chinese authorities would then investigate whether you have committed any crime. And if they say that you have, then you will be prosecuted in a Chinese court, according to Chinese law. If you are convicted, if you knock somebody's head against something in self-defence, but they say that you killed a person, then you will maybe be convicted of murder. Of course, in China there is capital punishment. We say, why? Why do you need to do that? Look at the way the Americans and the Canadians have worked it out. Why can't we follow suit? The Hong Kong government says, oh, it's not as convenient as our own suggestion. At what cost to Hong Kong? That is totally wrong, and that is why we objected to it.

**MLI: If someone violated the law in this railway station, they would then be transported to China to face Chinese justice?**

**Martin Lee:** Yes, exactly.

**MLI: It's sort of extraterritoriality in the new version.**

**Martin Lee:** Yes, as I put it, if you look at China, it's a big desert as far as the rule of law is concerned. If you look at Hong Kong, it is a pleasant oasis where you meet people who enjoy the rule of law. Yet our government created a little desert within this oasis, and you ask why. That's how it is.

**MLI: I think certainly Canada has had similar concerns about China's request to have an extradition treaty with Canada as part of the conditionality for a free-trade agreement. When the Chinese government makes requests to Canada for the return of Chinese nationals who have fallen afoul of the regime and fled to Canada, the Chinese government is not prepared to give us very fulsome information about what laws such people may have violated.**

**That makes it very difficult for us to consider extradition, unless we're convinced that they've done something that would in fact be illegal in Canada, leaving aside the pervasive question of the lack of due process of law, torture and interrogation, and extensive use of the death penalty. In some cases, they have given us a diplomatic note saying that the convicted person will not be subject to the death penalty, which suggests that the Chinese Ministry of Foreign Affairs is already able to anticipate the result of a Chinese judicial process. That can be quite troublesome.**

**What are the conditions under which Canadians in Hong Kong would have to think about returning to Canada? What are the sort of milestones that would have to be crossed that would say to Canadians in Hong Kong that Hong Kong is no longer a place where you can feel a sense of safety and the ability to engage in a way of life consistent with the values that have informed Hong Kong since the territory's establishment; in other words, free press and freedom of movement and an assurance of due process of law for the people in Hong Kong?**

**Martin Lee:** Let me start with your earlier statement about the death penalty. Your government would certainly insist to be stated that if China wants somebody from Canada to be sent back to China for trial, and if convicted, even if there is a death penalty passed, that China must undertake not to carry it out. But, even if they give you that undertaking without any reservation, there are cases in Hong Kong and in China of people who have committed suicide while in custody. They would say, the guy killed himself.

We also know there are occasions when they'll commit the suicide for the guy. They say it's not our fault, and I feel sorry that this guy killed himself, but we know that this guy in fact was killed by somebody else. That is a problem.

**MLI:** We have had this example with the Lai Changxing case where his brother died mysteriously in incarceration, and then Canada extracted a promise from the People's Republic that we would be able to visit Mr. Lai in the incarceration facility in Fujian to ensure that he's being well treated. But the Chinese government reneged on that promise once they got him back. It's very difficult, as you know, to rely on commitments from the Government of China as they tend to reinterpret them to their liking after we've already agreed to them.

**Martin Lee:** Indeed. The problem is China will promise you everything to get an agreement with you, and then after the agreement, they then decide what to do. If there's money in it, they will continue to honour the obligation under it. If they're losing money, they just tear it up to pieces. Even with the agreement on Hong Kong, I would suggest that your government should really think hard and look at how the agreement over Hong Kong is being broken by China time and again. What good is it to reach a trade deal with China, and, of course, your people will make sure that the terms are in favour of Canada and so on and so on. The agreement is good, but if they don't want it, what do you do?

That's a problem, and Hong Kong is a very good case for that. The Canadian government strongly supported the *Joint Declaration* back in 1984, although it had nothing to do with the Canadian government. That was because the Chinese government worked very hard to get international support of the agreement with Britain. The Canadian government, like the US government, applauded that agreement when it was announced to the public on September 26, 1984. At the time I was wondering why. It didn't concern the Canadians. Why did they applaud? Now I know, because China invited them to support it openly to stop the immigration tide from Hong Kong.

Once the Canadian government was actually invited by Beijing to support the agreement over Hong Kong, when China breaks that agreement, surely is up to the Canadian government to speak up for Hong Kong. I would say that the Canadian government owes Hong Kong people a moral obligation to speak up for us when something is going wrong on an agreement that was supported by the Canadian government.

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**MLI:** Yes, and we did endorse the *Joint Declaration* when it was lodged with the United Nations, so I think Canada has an international obligation. Would you say it's the same sort of obligation that Canada is part of it, and therefore we should so many years later still take responsibility for its implementation.

**Martin Lee:** You owe Hong Kong people a moral obligation. Look at it this way, a lot of people left Hong Kong in spite of it, and a lot of them came to Canada. Others did not, and a lot of people of Hong Kong decided to remain, some because they were not rich enough to get away, and some because they were not allowed by the various governments concerned. Some had decided to stay on to make it work, knowing that there is international support for that agreement.

The duty is particularly on the part of the British government, because it was a British agreement. Yet the British agreement does not weigh anything, because there is so much money that China can offer in terms of trade. The fact that the British government is not honouring their obligations towards the Hong Kong people doesn't mean that other governments should also follow them. Since your government still supports



the “One Country, Two Systems” policy, there is, as I call it, a moral obligation to speak up when something is going wrong. It is also in the Canadian government’s interest to make sure that China will honour the agreement over Hong Kong, so that China can be trusted with other agreements with other countries.

**MLI:** Yes, I think that that is a key point for us in terms of our future relations with China – an assurance that China will meet the international standards and the values that inform the international order.

Up to now, from our recent experience with China since the arrest of Huawei CFO Meng Wanzhou, we find that China is flouting its international obligations, both in terms of trade with the WTO by sanctions against imports of Canadian agricultural products like canola seed and pork, based on no valid grounds, and in terms of China’s commitment to the *Universal Declaration of Human Rights* by arresting Canadian citizens without any charge or allowing them any opportunity for defence. I think the Canadian government is currently considering how we should proceed from here, and I think that we will be remaking our China policy, and that what China does in Hong Kong is something that Canada and Canadians will pay attention to.

If I could turn to another question. You’ve been engaged in this sort of work for a long time. I have met you once before, prior to 1997, when you were in Toronto discussing how Canada should prepare for the transition. I think at the time we were concerned that yourself and others could end up in prison if things didn’t go well. Now, there’s a new generation of activists, Joshua Wong and Nathan Law, who I understand is travelling with you. How are your perspectives on how we should be addressing China’s flouting of the *Basic Law* in Hong Kong, compared to this younger generation who seem to be much more hardened in the desire for some sort of independent Hong Kong?

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“Our young leaders are not asking for independence. They just want China to honour their obligations.”

**Martin Lee:** In fact, there are very few people who really want independence; they know it’s not possible. In an ideal world, if we are looking at the whole thing all over again and decide what should be the proper future for Hong Kong, and if every option is open, then I think a lot of people will go for independence. We don’t have that option. We never had that option. In 1972, the British government was already under pressure from the People’s Republic of China to withdraw Hong Kong from the list of colonies under British rule. From that moment onwards, the British government actually accepted that Hong Kong is not a colony. They were already paving the way for Hong Kong to be returned to China one day. That’s a problem. The way forward is for every country to insist that all agreements made by China must be kept, just as the other countries should also keep their agreements. That is the only hope for Hong Kong.

These young people, they take their future seriously, and I don’t think they want independence. They know it is not an option at all.

**MLI:** You don’t see any disagreement between yourself and the younger generation of the 2014 umbrella movement? You’re more or less all in agreement that the change has to come from China, not from changing the arrangements in Hong Kong?

**Martin Lee:** We are not in the position to change it, because the army is actually located in Hong Kong. We have no weapons, and I don’t think the future of Hong Kong lies in a civil war. I don’t think any government would assist Hong Kong in that sort of situation. That’s a hard reality. Our young leaders are not asking for independence. They just want China to honour their obligations.

**MLI:** In 1997, I was optimistic about the *Joint Declaration*'s promise of 50 years with no change, because the expectation was that China would come into compliance with international norms of governance, democracy and human rights. China signed the *International Covenant on Civil and Political Rights* in 1998, and I think that for a lot of us, we were complacent that this Hong Kong "problem," as one might put it, would resolve itself.

Now, 20 years later, clearly this is not the case, and the situation appears to be deteriorating. I do despair about the future, because China is very large, Hong Kong is very small, and there seems to be a lack of political will on the part of democracies to defend Hong Kong against the treaty violations that China is, in a staged way, implementing.

**Martin Lee:** Yes, if the world allows the Chinese government to get away with all these serious breaches of the *Joint Declaration*, in a way, they are reaping what they sow. They allowed China to get away with it, and so China is more and more difficult. They are now finding it more difficult to hold China to other agreements with them.

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"You've got to decide among yourselves what you want out of any deal with China, and think at what price are you prepared to pay."

**MLI:** Yes. I think that's what the western world is now coming to realize. Our previous policy toward China – which was largely rooted in appeasement in the hope of gaining economic benefits through China and reducing non-tariff barriers to our goods and services – is not working out in our favour. Our friendship of utility with China is very shallow, and ultimately will turn against the interests of the West.

If I could, on that ground, ask one last question before we finish. Do you have any advice for Canada, as Canadians reassess our relationship with China in light of the current crisis in Canada-China relations? As someone who knows China well, how do you think we can get the best sort of result from the Chinese regime in terms of trying to develop a relationship based on genuine mutual benefit, honesty and trust?

**Martin Lee:** There's only one way. You've got to decide among yourselves what you want out of any deal with China, and think at what price are you prepared to pay. Then consider, is it really in the interest of the Canadians for that deal to be made? If not, don't make it. If you think it's good enough, and China is willing to sign, ask yourself how can you enforce that deal if China breaks it? Don't just sign it because China is prepared to sign it. Otherwise, trouble will come. And you've got to decide now rather than later, because it's much more difficult to get it right later, when there is already a serious breach.

**MLI:** Thank you for those wise words, and thank you very much for giving so much of your time. I wish you all the best in your safe travels to the United States.

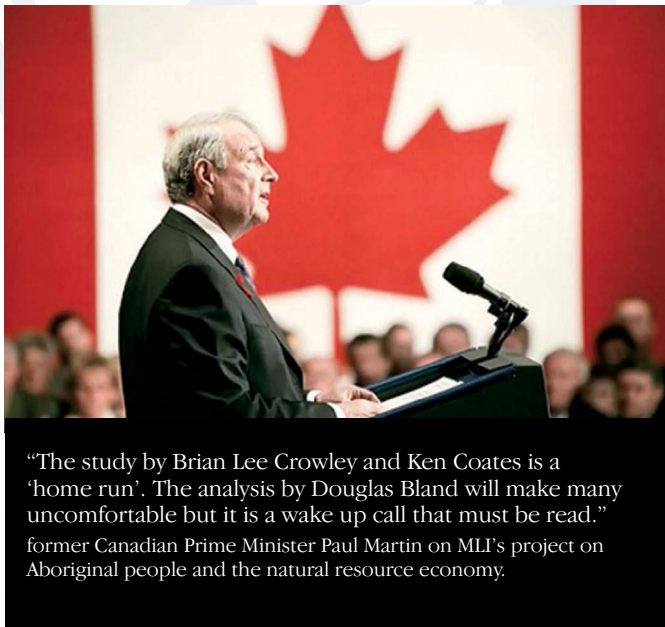


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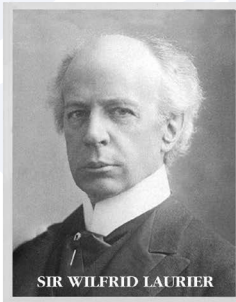
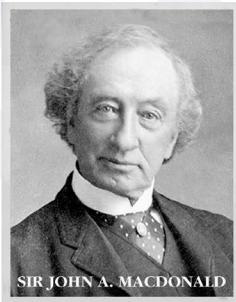
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