Citizenship Management: On the Politics of being Included-out

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Abstract:
Many in Hong Kong have identified the city as “half-sovereign” or “conditionally sovereign,” as postcoloniality has brought about new ruptures and shifting boundaries of citizenship in economic, cultural, and legal terms. The work of deciphering questions of belonging is still ongoing, and has in fact intensified in recent times. Increasingly, who qualifies as a citizen and where their sense of home is have become vital questions for two visible groups: the Chinese Mainlanders whose personal and cultural fortunes have been transformed by opportunities presented by the permeability of the city-border, and the foreign domestic helpers whose right of belonging has been caught in the discrimination of immigration laws. My argument is that their fates are conjoined by what I call the state of being “included-out,” something augmented by nebulous doctrines of citizenship rights as well as by legalized and informal forms of cultural racialism. Through an analysis of the landscape of human rights struggles concerning the right of abode for people caught in half-sovereignty, I hope to outline the biopolitical continuum of the “included-out” in Hong Kong’s citizenship management regime.
Bio:

John Nguyet Erni is Chair Professor in Humanities and Head of the Department of Humanities & Creative Writing at Hong Kong Baptist University. An elected Fellow of the Hong Kong Academy of the Humanities, he has published widely on international and Asia-based cultural studies, human rights legal criticism, Chinese consumption of transnational culture, gender and sexuality in media culture, youth popular consumption in Hong Kong and Asia, and critical public health. His books include Understanding South Asian Minorities in Hong Kong (with Lisa Leung, HKUP, 2014), Cultural Studies of Rights: Critical Articulations (Routledge, 2011), Internationalizing Cultural Studies: An Anthology (with Ackbar Abbas, Blackwell, 2005), Asian Media Studies: The Politics of Subjectivities (with Siew Keng Chua, Blackwell, 2005), and Unstable Frontiers: Technomedicine and the Cultural Politics of “Curing” AIDS (Minnesota, 1994). Currently, he is completing a book project on the legal modernity of rights.
Citizenship Management: On the Politics of being Included-out

The focus of my contribution to this special issue lies in the notion of citizenship management, or more broadly migration or movement management in general. Critics and theorists of migration studies of floating subjects, from the social sciences, through the law disciplines, to cultural studies, do not always mean the same thing or draw the same inference from statements about the precarious situations of citizenship when they make them. What is more, the idea that citizenship might be described as an unsettling political experience of being “included-out,” is not one which has penetrated into our common sense understanding of citizenship in our everyday life today. After all, many of us are still deeply attached to the liberal democratic ideals of citizenship rights.

For nearly a decade, I have turned my attention to human rights legal studies, trying to find a way to set it in dialogue, however provisionally, with critical humanistic cultural projects. Elsewhere, I have made the argument that human rights and critical cultural theory have produced each other as mutual blindspots, sometimes to the point of negating each other entirely (Erni, 2010, 2011, 2012b). Rosemary Coombe (2011), a Canadian scholar of law, culture, and communication, has said that “[t]here are numerous studies of international human rights as a dominant discourse and practice informed by many varieties of critical social theory, [yet] those who adopt the perspectives, methods, and concepts characteristic of cultural studies do not yet form a community of interlocutors engaged in a shared critical project” (10; emphasis added). Like her, I have wondered about ways in which we can remap the ethico-political commitments of Cultural Studies from within a “rights imaginary” (Erni, 2012b; see also Davis & Knox, 2014). In this occasion, I hope to be able to elaborate that project a bit, taking on the specific angle that relates to the cultural politics of citizenship management, and doing so alongside a human rights-inflected legal critique.

First off, by “citizenship management,” I am referring to two particular regimes of
governance. The first regime concerns the managing of the degree of elasticity of the border in the regulation of the flow of people and goods. In the world today, borders are indeed elasticized all the time, as the regulation of the in- and out-flow of people and things are administered through the mediation of historical relations (e.g. from colonial to neoliberal economic arrangements), cultural and political negotiations (e.g. sovereignty mapping and remapping across time and space), and of course the application of legal codes and doctrines governing multiple forms of migrant movements. Needless to say, proponents of globalization continue to emphasize the unfixity of borders, seeing that the various terms of political, economic, cultural, historical, and legal negotiations between nations have become more and more frequent. The second regime of citizenship management, derived from the first, concerns the managing of other people’s desire for settlement. Plainly, every citizenship or border management apparatus begins with the imagination of an other, whose desires are the very target of regulation. And just as there are many different forms through which the desire for settlement takes, there are equally multiple sub- or para-systems of citizenship management augmented by various branches of immigration laws (e.g. refugee laws, visas regulations, marriage laws, etc.).

These two aspects of citizenship management, it seems, hinge on the core questions about inclusion and exclusion. The subject of this paper is to consider how those twin questions can be imagined in a new way.

Problematizing Citizenship by Nativity and/or Cosmopolitanism

So, what do I mean by the politics of being “included-out”? Citizenship is one of those major concepts that operate in our society through producing, categorizing, and prioritizing differences, identities, and varying structures of belonging. To say that it is a perpetually unsettling machinery of the state, which brings into being a constant state of precarity for both
citizens (i.e. those who are “included” into the body of the nation-state) and denizens alike (ranging from the resident aliens, the temporary migrants, the asylum seekers, to the wholly undocumented other), is to recognize that all attempts to stabilize this concept of citizenship in terms of birth rights, on the grounds of human rights, or by way of humanitarian impulse, have largely been shown to be inadequate, if not flawed. One of the suggestions I make in this paper is that we should replace the conceptions of nativity and cosmopolitanism – the twin weapons often used in the fight for citizenship rights – by a more technique- and practice-based analysis of citizenship management. As critical legal scholar Thanos Zartaloudis (2013) has said, “[A]n adequate understanding of the fluid practices of inclusion and exclusion in a post-sovereign world can only be reached by an approach that keeps in mind the whole array of governmental techniques of controlling people on the move” (661).

Frankly, the locution “inclusion-out” is not novel at all. All I am trying to do here is to follow the theoretical instincts of many critical thoughts, most closely of course those of Derrida, Bauman, Bahktin, Badiou, Foucault, and Agamben. For some time now the indistinction of in and out has been understood as banal enough to render my position quite straightforward: that is, if we look at the various functional techniques of citizenship management such as the control of borders, of the right of abode, of ID cards, and so on, and examine the social and economic effects of those techniques on the vast number of the newly arrived, then we are actually detecting a situation of what can be called general “inclusion-outness.” This is not to say that inclusion is purely imagined or fake for the incorporated persons who have successfully claimed or counter-claimed their citizenship papers from the perspective of the law. It is to say, rather, that for some time now, citizenship management has been practised through the state of general inclusion-outness and this changes everything that used to be called politics (as well as anything we may understand as looking at citizenship rights through/and politics and vice versa). This transformation,
well-evident today, can be described as a move away from the multiverse of restricted

citizenship and border control to a general social economy about the instability of “belonging”
as such, as a structure of felt, lived, and often feared reality.

I simply want to suggest that the model being proposed here is close to a description of

how ideas move in speech through *formulated disruptions*. Like in a (stammered) flow of

sentences, citizenship or movement management works through the use of various

punctuation marks in order to denote the borders between ideas in the speech. Punctuation

marks permit a formulated commotion of ideas, whose sense and meaning are made possible

through a regime that is endeavored to produce and link meaning-clusters, paradoxically,

through punctuational devices. In other words, what the syntactical regime does is to allow

linkage and delinking, conjoinment and separation, to coexist in the very constitution of

belonging-meaning. I found this metaphor from the work of a couple of American

anthropologists Alan Smart and Josephine Smart, who had spent time in Hong Kong and

observed our city’s border regime and limits of mobility. Smart and Smart (2008) put their

concept of border control in this way:

Punctuation conventionally identifies arbitrary symbols that break up the flow of speech.

Here we extend this idea to other arenas. The world is punctuated by barriers, the most

important of which are national borders. For some people and things, borders act as

periods, full stops denying legal entry. For others, they are like semi-colons, requiring

visas and work permits. For the global elite, by reason of their citizenship status or their

assets, borders are like commas, slightly slowing movement at various checkpoints,

particularly if they have access to VIP lanes and private jet facilities at ports of entry.

The metaphor can be extended. In these post-9/11 days, certain people move around the

world with the equivalent of asterisks attached to them, having been placed on “no-fly” or

other watch lists. Others, such as guest workers, move with parentheses, allowing their
presence only under certain conditions, such as continual employment with an approved employer. (175-6)

Some readers may now be imagining what punctuation marks are hanging over their heads, given that self-recognized full and legal citizens, people on visas and work permits, guest workers, global elites, and even people on governments’ watch-lists may be among us! I assure you that your basic rights of existence are in full working order: some of us are indeed inside and included in a border marked out by the state, some of us are quite clear about our temporary existence of surviving a border regime that never fails to remind us of our temporary status with expiration dates, while some of us reading this may be disgustingly outside and excluded in the light of immigration and citizenship laws. There is nothing wrong with your recognition of how your identity is currently being managed by the state’s citizenship regime, but I want to insist to you that nevertheless, the argument that I want to make to you is that citizenship works like mundane and familiar markers in the flow of mobility, semi-mobility, and immobility, all encapsulated within, and supported by, the logic and politics of being included-out. Our structure of belonging, therefore, gains its meaning not because of absolute and stable dichotomies of in and out, as if the possessors of citizenship are in a permanent state of bliss, those in limbo will always be defined that way, and those denied entry are forever seen as unwelcomed and kept out. Instead, as a general discursive state, our structure of belonging is in the shifting relations of difference, which are tested, refined, and incarnated by techniques of control in the field of citizenship management.

Nevertheless, there does exist a grey line of capture that is drawn between citizens and non-citizens, so that surviving your sense of home and belonging increasingly becomes the condition for both the included and excluded, in what Zartaloudis (2013) calls “a generalized perilous inclusion that excludes and vice versa within the biopolitical continuum of a global
civil war” (662). I am not sure what he means by a global civil war, but given his many years of writing and advocacy work on behalf of refugees and asylum seekers, I can discern that there is in fact a global war going on over nationality and the right of migration. This may well be the defining political and legal-administrative characteristics of liquid modernity (Bauman, 2000).

Moving the Punctuation Marks: Citizenship and (Un)belonging

Since our concern here is not merely with abstract theoretical critique but with an attempt to unlock the real secrets of the techniques in the modern citizenship regime, let me turn to the question of how indeed one sees this functioning around two realist positions, which argue that either citizenship is a matter of governmental decision according to the rule of law or it is a matter of the power politics of governance with or without democracy. The former position, derived from administrative and legal theories, has been copiously written about, explained, and adjudicated in the vast terrain of constitutional law and human rights law. The latter one extends from T. H. Marshall’s (1950) classic formulation of democratic citizenship (and hence his liberal idealism) to lodge a critique of state governance through a triangulation of state colonial power with that of the market, resulting in the enforcement of an often restrictive and anti-humanitarian control of citizenship. I consider these as realist positions, merely as a marker against the more discursive position that I want to advance around the notion of understanding citizenship as the articulation of the politics of being included-out, in law as much as in state politics and market forces. Let me now illustrate those analytical strands by the example of Hong Kong and its own regime of citizenship management.

The “Right of Abode” Cases: Hong Kong’s Constitutional Crisis
By all accounts, historians of Hong Kong, especially those who blend with a journalism and legal background, have observed that throughout the territory’s colonial history and into the tumultuous years of transition into a semi-sovereign city-state, nothing trembles its constitutional foundation more than the issue of citizenship management. When all the other differences have been raised and exhaustively critiqued, there seems to be a sort of irreducible, ineradicable minimum there, the differences, which are most palpable at our borders to Mainland China and other borders with neighboring Asian countries enacted for economic and labor transactions, which we call the “right of abode.” It is no exaggeration to say that this question of the right of abode has single-handedly made us realize that in Hong Kong, there has been a fundamental shift underway in the concept and practice of governance-by-law. One local democrat likened this situation of handling the deep ambiguities embedded in the administrative dictum of “One Country, Two Systems” to a perpetual standoff where one side has seized the high ground, cocked their rifle, but not yet fired the shot (cited in Davis, 1999).¹ Barely two years into the transition of colonial Hong Kong into HKSAR, a considerable number of persons and families straddling across the Hong Kong-China border, whose right of abode in Hong Kong had been formerly denied, had returned to ask the Hong Kong courts to adjudicate their residence rights. The history of why these persons and families were relegated to split existence in precarity across the border dates back to the 1960s, and requires a political, and not merely legal-administrative, analysis. I shall return to this later. For now, I will put Hong Kong’s right of abode crisis in this way: at the core of the intense political battle is not just the question of the right of abode as something to be handled through domestic legal measures (which is merely an administrative crisis), but it is also a problem of the right to “the right to handle it” (which is a much more complex constitutional and cultural crisis).

To understand this terrain (and the realist analytical position being advanced from it), let
me first lay out a few crucial discursive notes:

1. Legally speaking, a “permanent resident” as a recognized subject is materialized through Hong Kong’s Basic Law (effective on July 1, 1997), especially its Article 24 (hereafter “BL24”), which defines permanent residency according to two main criteria: nativity (before or after July 1, 1997) and fulfillment of legal and continuous residency requirements (of seven years).²

2. Also legally speaking, someone’s right of abode is co-regulated by the Immigration Ordinance (cap 115) (hereafter “IO”). But the co-management by BL24 and IO is not without discursive conflict. Changes were made to the IO within the first two weeks of the transition in 1997, which stipulated new requirements for those seeking the right of abode. The amendments stated that (1) only children whose parents had the right of abode at the child’s birth were eligible for their right of abode, and (2) those children in (1) were required to obtain a “Certificate of Entitlement” and a one-way permit (providing exit approval) issued from the Mainland Chinese authorities. Those amendments are not in harmony with BL24. As a result, the subject seeking the right of abode is discursively split.

3. Such a split of the subject seeking right of abode has spawned a discursive instability, as evident in legal challenges lodged in the courts. The constitutionality of the newly enacted immigration ordinances was challenged in two major cases in 1999: Ng Ka Ling v. Director of Immigration and Chan Kam Nga v. Director of Immigration. Specifically, those applicants argued that the two ordinances unconstitutionally restricted their right as mainland born children of Hong Kong permanent residents to emigrate under BL24. Exercising its power of judicial review under the Basic Law – and in some way, testing the tolerance of the Mainland authorities – Hong Kong’s Court of Final Appeal (hereafter “CFA”) held in the applicants’ favor in January 1999.
4. Seeking to stabilize this shaky ground, the HKSAR government, taken by utter surprise by the CFA rulings, enlisted imperial power. More concretely, it made a request to the Standing Committee of the National Peoples’ Congress in Beijing (hereafter “NPCSC”) to reinterpret the Basic Law. (This is pursuant to Article 158 of the Basic Law (BL158), which stipulates the requirement of seeking NPCSC interpretation on matters concerning the responsibility of the Central government, or concerning the relationship between the Central Authorities and the Region.3) In its interpretation, the NPCSC essentially restricted the right of abode not only to the nativity and/or residency requirement of the applicants themselves, but also that of their parents (see “Standing Committee,” 1999). Therefore, in judicial discursive terms, the domestic doctrine of *jus soli* (or the “right of the soil,” meaning the right of citizenship by birth in the territory) was forced to incorporate an imperial (national) demand of a doctrine of *jus sanguinis* (or “the right of blood”).

5. Domestic self-rule falters under the dominion of imperial power. Because of the NPCSC reinterpretation, the CFA formally overturned its own *Ng Ka Ling* ruling, holding that the provisions declared unconstitutional in that judgment were in fact constitutional. Further, the CFA turned around to support the argument that the NPCSC indeed had power to interpret the Basic Law, and noted that such interpretations were binding on the courts of Hong Kong.

6. But as with any struggle for self-rule, the local courts gasped for any seizure of opportunity to exercise its autonomy. In 2001, the CFA yet again reversed its stance in subsequent cases, when more applicants came forth to challenge the constitutionality of the “Beijing hand.” Most prominent of the cases was the ruling in *Director of Immigration v. Chong Fung Yuen*, which received wide media coverage as a case that adhered to BL24(2)(1) without the need to invite NPCSC interference. The CFA also
stressed that there was no indication its decision would result in an immediate influx of a large number of people from the Mainland, which stood in stark contrast to the government’s “mass inflow” predictions made in the Ng Ka Ling case.

7. To complicate this further, side-by-side to the **Chong Fung Yuen** ruling, the CFA denied another claim of the right of abode on the ground of residency requirements. In **Fateh Muhammad v. Commissioner of Registration**, the applicant was a Pakistani national who had resided in Hong Kong since the 1960s and argued that he had the right of abode under BL24(4). But Mr. Muhammad had been in prison for three years at the time of his application for judicial review. Seeing this, the CFA held that the term “ordinarily resident” from the IO could not be stretched to include time spent in prison. The CFA also held that the seven continuous years must come immediately before the time when an application for permanent residence was made. In this sense, the CFA, bypassed BL24(4) to align with the IO, the disharmony of the two has been the core conflict from the beginning.

8. The terrain of struggle for the right of abode was expanding, amounting to a kind of humanitarian crisis for the small city. Throughout the period of the right of abode crisis, thousands of litigants, many of whom were overstayers with temporary permits, held wide protests and hunger strikes. Between 1999 and 2002, hundreds of lawyers joined the claimants in silent marches, while legislators and activists held candlelight vigils and student leaders organized protests and campaigns. Some pro-rights groups took the situation to the Human Rights Commission of the United Nations (see Ku, 2001). Despite these efforts, in the end, the majority of claimants were deported.

9. In 2012, the **Chong Fung Yuen** case returned to the media limelight, at the time when the social debate intensified about the control of the influx of pregnant women from the Mainland into Hong Kong’s hospitals to deliver their children. New legislative
proposals were made to revisit the right of abode privileges of Hong Kong born children of non-resident Mainland parents, and those proposals included a suggestion to once again seek NPCSC interpretation (see Ip, 2012; see also Chan, 2012).

Without a doubt, Hong Kong’s right of abode crisis doubles as its crisis of autonomy. The discursive notes above, in this light, present not only judicial and other facts, but also an analytical landscape within which the politics of being included-out is played out. And to be sure, the laws that spawned widespread insecurity for those seeking the right of abode and family reunion became the very same laws that destabilized the political border originally set up to ensure Hong Kong’s autonomy. This has been the widespread conclusion made about the right of abode saga, as echoed by legal scholar Anne Fokstuen (2003): “After the ‘right of abode’ controversy, it was clear that China would get involved when it felt its authority was being threatened, but that it would maintain a more hands-off approach in other areas” (272). It is in this crucial sense that we recognize that a critique of the administrative and legal restriction of autonomy to understand the border regime of Hong Kong is inadequate. The literature on the traumatic constitutional crisis of Hong Kong has been dominated by a consensus that the trauma produces only a trapdoor, locking Hong Kong’s present and future in a terrifying suffusion of rights into heavy-handed, top-down subjection. But I suggest that what the right of abode controversy demonstrates is far more complex. In the strict sense, what is curbed is not a simple restriction as such, not a wholesale denial of the rights of abode for the persons and families involved or of the right of judicial autonomy for the Hong Kong courts. The political genre with which to explain this, I suggest, is the genre of expressing the political conditions of being included-out.

As a political concept, inclusion-outness is not something that severs, but something that bridges: a sense of inclusion that is in very close proximity to the sense of exclusion, perhaps a sense of the double-take in relation to what happens in experiencing, or sensing,
our citizenship or right of autonomy. Implied in Fokstuen’s comment is an understanding of the incipient state of being included-out, of a city-state whose very own constitution grants its own autonomy through an exceptionalist logic. And this changes everything about the way we come to grips with the legal hegemony that writes the rights – of both those seeking the right of abode and those domestic legal institutions seeking independent judiciary powers – in close proximity with a write-off. Living in such a border regime, mobility is interrupted, bodies are confused, and identities drift. This is why inclusion-outness resembles a trauma, in the specific sense that around it there is always a surplus of signification. But crucially, this makes citizenship possible, not impossible, but not in the sense that the subject still has a conventional relation with the state and the hegemon as either inclusion or exclusion, optimism or dejection, from which to derive a foundation of self-possessed identity of citizenship. Instead, citizenship is made possible in the sense that as the state of being included-out shatters the polis (one’s political life) that was a foundation for what gets taken for granted about its historical self-continuity, it transforms the work of surviving citizenship.

Survival is at the heart of the machine producing infinite states of being included-out. But I want to be clear about what kind of survival that inclusion-outness engenders. At one level, we may understand survival in such a confusing citizenship management regime of ins and outs as a political subtraction, leading only to mere survival. The precarity that the citizenship laws subject to those seeking belonging and family reunion, as well as the precarity that that same legal machinery subjects the city that seeks autonomy, may well provide plenty of scenarios of reduction of political power into the infinite production of mere survival. In this regard, Thanos Zartaloudis (2013) provides a convincing description: When only survival remains at stake, post-sovereign biopolitics no longer attempts to manage life in order to better it or simply to exclude its more undesirable parts, but aims
to reduce both the included and the excluded to their respective degrees of a bare minimum. Survival as the lowest common denominator, before long – if it had not done so already – will unite, under conditioned degrees of minimum states of being, the majority of the included with the excluded. (662-3)

As convincing as this specter of “bare life” may be, by echoing Agamben, surviving citizenship nonetheless remains an intricate work. Enclosures, temporary statuses, unreliable hopes, interim disillusionments, and threats of deportation may be instants of “reduction,” but they may also allow us to mark the forces of inclusion and exclusion, and to track the transitory dynamics of blockage and relief involved in its circulation. Can there be a new habitation of subjectivity pressed-up by proximate lines of opposite forces? This is an important theoretical question that any consideration of the state of inclusion-outness must seriously consider. Like many other critics, I insist that the law is contingent. It remains a form of power where subjection pulsates, modulates, and fluctuates, rather than a totalizing force.

*Whose Home?: The Crisis of Belonging in Hong Kong*

What we have discussed so far centers on the legal terrain of citizenship rights. I have wanted to indicate that the legal regime of citizenship rights in Hong Kong is better understood as the law’s capacity to produce a “double-take” that makes citizenship possible, to insinuate exclusion in the promise of inclusion, or to allow for inclusion in the threat of exclusion. The CFA’s vacillating rulings between the *Ng Ka Ling* and *Chong Fung Yuen* cases show us how that biopolitical continuum works itself out. But this legal machinery of governmentality cannot provide us with the full explanation of the precarity of citizenship survival in Hong Kong. There is in addition a social and historical explanation of how the evolving citizenship management regime in Hong Kong governs the borders that regulate the
inflows and outflows of persons and families. This regime, which dates back to colonial times and extending into the post-transition period, nevertheless depends upon a material conjuncture of housing and social welfare policies. In performing this conjunctural analysis, as many others have done, we enact the second realist position. I want to proceed by highlighting the essential dimensions of this conjuncture, in order to suggest that most of the existing political and historical analysis of the conjuncture pays insufficient attention to the “included-out” and its discursive range.

The first essential historical feature of Hong Kong’s citizenship regime has to be the virtual production of “scarcity,” which has been used for many years to justify the management of population flow, home construction, land use, and utilization of public resources. Scarcity, a construction commonly used by many governments across Asia, Europe, and Latin America, carried a functional weight in the case of Hong Kong’s early colonial history. Between 1945 and 1956, the population of the colony increased fourfold, many of them new arrivals from Mainland China. Among them, 70% were identified as refugees (Leung, 2004, 101). The quota system implemented by the colonial government to regulate population flow was quite leniently implemented, leaving a legacy of a laissez faire immigration policy. But by 1956, the early form of a discourse of scarcity began to take shape, when the government wrote in its annual report with an opening chapter entitled “A Problem of People.” Commenting on it, Chi-kwan Mark (2007) writes:

Simply put, the problem was about the consequences of excess population on finance, housing, education, medical services, social welfare, industry, commerce and even political relations and the law…In essence, the “problem of people” did not emerge out of the blue in 1956, for the chapter (which was reprinted several times as a separate pamphlet) was actually a review of the refugee problem in the past ten years. (1146) An accumulated weight of unregulated population growth prompted the colonial government
to realize the permanent nature of the problem, and to search for a lasting solution. Official public discourse began to substitute the term “illegal immigrants” for “refugees;” they were then deemed illegal because they were crossing the border into Hong Kong as mainly economic, and not political, refugees, and thus should not be allowed to stay (Mark, 1148). By May 1962, the government implemented a policy of “turning back” all illegal immigrants from China, a stark contrast to the two decades earlier of open door policy.

We may describe that period as a nascent stage of immigration control, with a fairly clear-eyed vision to keep out excess population. But what happened to those who were allowed to stay, in spite of an administrative policy framed by the rhetoric of scarcity? In many ways, the great fire in 1953 at the Shek Kip Mei squatter village, and the subsequent building of massive resettlement housing for thousands of homeless people, had raised new concerns about the immigrant residents. They were again seen as problems for the government. Poverty, public health threats (such as tuberculosis), and over-crowdedness had given the colonial government second thoughts about letting them stay in the territory. As a result, as Leung Hon-chu (2004) puts it, “the disenfranchised majority of residents in Hong Kong were little more than colonial subjects allowed the ‘privilege’ of living in a ‘foreign’ territory” (102). Because “The Problem of People” in the mid-1950s had extended from the trouble of population excess into one of population resettlement in the 1960s, the discourse of scarcity also changed from one that aimed at coping with the unwanted others from without to one that had to actively manufacture the marginalized from within.

This leads to the second major historical features of Hong Kong’s citizenship regime. After the social unrest and rioting in the mid-1960s, a new discourse of sheltering and of a sense of home was advanced by the colonial government as part of its effort to update its colonial policy. Because its old colonial institutions were largely premised upon sojourner communities with only transient interests in the territory, they failed to allow the citizens to
imagine that they could claim their place in the territory. Sheltering and homeliness – especially in the forms of building a legitimate European-style legal culture, and of enlarging the role of the government as a provider of welfare and public services – were deemed necessary to meet the needs of the coming generation of young people born in Hong Kong at that time. By the 1970s, public housing schemes, public health services, labor laws, access to free education for nine years, and assistance programs to the poor had been implemented. Most historians of Hong Kong mark this as the period of “benevolent” governance in the colony (see, e.g. Munn, 2001).

The third core feature of the citizenship regime in Hong Kong arises as a result of benevolent governance. With it came what Ku and Pun (2004) have aptly termed the re-creation of the citizen-subject as the “enterprising individual.” The compassionate form of governance, Ku and Pun suggest, corresponded with the production of a docile but hard-working enterprising population. When the residents were provided shelter and various public welfare services, they were gradually transformed into a new class of citizens. Yet Ku and Pun argue that far from having the kind of dream that T. H. Marshall championed as civic and political citizenship, benevolent governance brought about a systematic depoliticization of everyday life within the colony. By the “enterprising individual,” they refer to:

...someone who is always on the lookout for resources and new opportunities to enhance their income, power, life chances and quality of life in order to take advantage of the rapid changes of economy and society. It is a conception of an ideal citizen-subject emphasizing self-enterprise and self-help...[He or she] embodies certain personal qualities such as “intelligence, determination and adaptability,” which can motivate and enable him or her to strive after continual “self-improvement,” and to “rise to the occasion” even in times of adversity. In a nutshell, the hegemonic state
project...requires a specific ethic of self and citizenry – an *apolitical and yet productive* economic subject – to live up to the project. Yet, the question is, where does this project lead us with respect to the issue of citizenship? (Ku and Pun, 2004, 1-2; emphasis added)

As someone hailed from the generation of rapid economic growth in the shadow of a fading Cold War environment in Hong Kong, and someone brought up in a middle-class immigrant family, I find it hard to refuse this narrative of the citizen-subject. Most authoritative historical accounts of Hong Kong have talked about the apolitical nature of the common populace, but I find the description above most convincing. But whereas these dominant accounts regarding the apolitical nature of the citizens may have oversimplified the situation, Ku and Pun in turn emphasize that this apolitical condition was in fact buttressed by a highly productive self-reproduction as the economic citizen-subjects. In addition, Ku and Pun add that benevolent governance managed to suture this capitalist subject with the popular idealization of Hong Kong as a home, one that was ostensibly inclusive of anyone who was able to shed poverty and dependency on public resources to climb the economic ladder, as it were, to metamorphosize themselves into new economic citizen-subjects. By the early 1980s, catch phrases such as “Hong Kong is My Home” (香港是我家) had been popularized by the government – for many settlers who had experienced hardship before, the construction of Hong Kong as their “home” offered an ideological cradle or base for social and economic advancement. Echoing Ku and Pun, Leung Hon-chu (2004) emphasizes that “[t]he choice of the word ‘home’ represents a very strategic use of language, as it avoids the thorny issues of the colonial status of Hong Kong and the exclusion of the majority from channels of political participation, while promoting a sense of belonging to the territory. A depoliticized and private form of citizenship based on rights derived from residence in Hong Kong arrived” (103).

To me, the insight of the enterprising citizen-subject cradled by the idealization of
homeliness is critical. It is a notion that shows us how the logic of being included-out was vividly at work. Put simply, with this hegemonic social consensus in place, Hong Kong had become a “gated” city. Gone was the era of a lenient immigration policy: by 1980, the government had abandoned the so-called “touch base” policy and began to implement a rigorous deportation program of all illegal immigrants caught at the border. However, the exclusionism at work did not only take place at the border; it worked more subtly through a combination of immigration and housing policies that practised the exclusionism from within the social body itself. For instance, the immigration policy was designed to block migration of whole families from Mainland China into Hong Kong; Mainland wives and children of men settled in Hong Kong could not join him because of the quota system. At the same time, these men, now categorized by the immigration department as “single,” were not eligible to apply for low-income housing (the public housing policy systematically disadvantaged single individuals). When families were eventually reunited in Hong Kong, they still had to wait in line for public housing because of residency requirements (the seven-year continuous residency eligibility requirement). In this formation of a gated city, those who were “inside” Hong Kong – the “single” men, split families, and newly arrived/reunited families – suffered from various forms of exclusionism. As Hong Kong became more and more affluent in the 1980s and 1990s, the notion of the enterprising individual chasing after their economic dreams gradually turned into a nightmare of class and economic disparity. The “included-outs” – as real people and as a historical discursive category of subjectivity – quite literally emerged in the ideological system of Hong Kong’s citizenship management approach.

But, what of those Hong Kong residents who partook of the city’s economic success? What is the relationship of this vast middle-class who reaped the benefits of an increasingly neoliberalized ideological economy and those captured as the “included-outs”? The last
essential feature of the colonial citizenship regime in this gated city concerns the rise of a distinctively gendered and racialized migrant labor economy. Consistent with the enduring discourse of the “enterprising individuals,” the middle-class showed increasing agitation toward those who were dependent on public assistance, those who did not make it to the professional class, those who failed to display the right kind of work ethos to overcome all obstacles. By the 2000s, two classes of the included-outs, so to speak, had clearly emerged in the press and in the agitated discourse of the middle-class. There were the “new immigrants” (“新移民,” which is an ideologically loaded term to refer to the sub-economic class from culturally backward Mainland China, claiming questionable familial lineage with those living in Hong Kong). And, there were the ethnic minorities. Over time, those two classes of people from within the same social body as the enterprising class are increasingly marginalized. We have seen how this marginalization was fully played out in the right of abode crisis discussed earlier. The key link between the right of abode seekers and the “new immigrants” clearly lies in the colonial legacy of splitting up familial ties in the process of transforming Hong Kong into a neoliberal economy.

As for the ethnic minorities, the key link that explains their marginalization is the rise of the Hong Kong Chinese middle-class formation, whose ascendancy depends upon the assistance of a menial domestic labor class. As a gendered and racialized working class, the ethnic minorities were brought in as outsiders. Studies of the migrant workers (legal or illegal) have repeatedly shown us how the state and the entrepreneurial middle-class need them in sectors of the economy that the locals are either incapable of or unwilling to participate in. According to Simmel (1971), the classic sociologist who studied the rise of “strangers” in European cities, ethnic minorities are the “strangers-on-the-inside” whose function is to do the “dirty jobs,” thereby fortifying their symbolic outsiderliness (see also Erni, 2012a).
In 2013, there was a spate of widely reported judicial review cases heard in the Hong Kong courts concerning foreign domestic helpers who were denied their right of abode despite continuous employment and uninterrupted residency in Hong Kong for a long time. The most visible case was that of appeal case of *Vallejos v. Commission of Registration.* The applicant, Ms. Evangeline Banao Vallejos, is a native of the Philippines. She came to Hong Kong in 1986 as a foreign domestic helper, while the city was still a British colony. She approached the Immigration Department for verification of eligibility for permanent residence in April 2008. In November that year, the Immigration Department turned out her application, citing the fact that she was not considered to be “ordinarily resident” in Hong Kong by reason of Immigration Ordinance Article 2(4)(a)(vi). She then approached the Registration of Persons Office to apply for a Hong Kong permanent ID card, for which she was also rejected. A subsequent appeal to the Registration of Persons Tribunal also failed. At that point, Vallejos applied for legal aid to lodge a judicial review. She turned out to be one of five Filipino nationals who filed applications for judicial review around the same time.

The presiding judge ruled against Vallejos’s appeal, because he reasoned that she did not meet the main criterion for gaining the right of abode as laid out in the Immigration Ordinance, namely that the applicant concerned must be “ordinarily resident” in Hong Kong. The judge disqualified Vallejos by comparing the situation of all foreign domestic helpers to that of refugees and prisoners. He first reasoned that his court “had no difficulty in concluding that section 2(4)(b) [of the Immigration Ordinance] which applies in a blanket way to exclude all periods of imprisonment or detention from the expression ‘ordinarily resident’ regardless of the facts of individual cases, is constitutional” (Vallejos, CFA, para. 89). In other words, in adjudicating who qualifies the “ordinarily resident” requirement of the law, the judge hijacked the Vallejos case to the context of imprisonment, likening the contractually-defined restricted resident life of foreign domestic helpers to the prisoner’s life
of confinement. On this basis, the judge ruled that:

In my view, the exclusion of foreign domestic helpers under section 2(4)(a)(vi) does not encroach upon the central characteristic of the term “ordinarily resident”. It is a category of exclusion not different in kind, but only in degree, from the pre-existing categories of excluded persons, for instance, Vietnamese refugees and imprisoned or detained persons.

(Vallejos, CFA, para. 116; emphasis added)

At the time of this writing, the case is undergoing the last round of appeal at the Court of Final Appeal. Unfortunately, many legislators from different political parties, including some from the pro-democratic parties, welcomed the ruling, for the fear that any hint of support of the right of abode of foreign domestic helpers would offend their middle-class constituents.

The theorization I undertake in this paper surrounding the politics of the included-out, I want to suggest now, materialize more and more in the curious lives of the “new immigrants” from the Mainland and South and Southeast Asian minorities. I want to suggest that whereas Smart and Smart’s metaphor of the “punctuation marks” mentioned earlier in the paper is used in this paper to remark on a fairly general condition of governmentalist management of people on the move, the notion of the included-out seems to speak more narrowly to the conditions facing new immigrants and ethnic minorities, whose experience of and struggle around “insiderly exclusion” are most profound and unique.

Conclusion

Let me conclude. Although the two conventional forms of critiques of Hong Kong’s citizenship management regime – what I have called the realist positions – cannot fully explain the contingent and precarious nature of the existence of the migrant other, they are the critiques many of us adhere to. My concern here has been whether the realist positions, while valuable, are constructing a type of politics that arises from the foundation of a
binaristic difference between inclusion and exclusion. It is difficult to imagine a language of
governmentality without some kind of guaranteed dichotomy. I have suggested that the
critique of the administrative and legal restriction of autonomy to understand the border
regime of Hong Kong is inadequate because that critique seems to fail to see the “bridging”
possibility of the trauma. It fails to grasp that the legal form of governmentality creates a
sense of inclusion that is in fact in very close proximity to the sense of exclusion, and how
this does not undo citizenship but in fact makes citizenship possible, the kind of
citizenship-by-survival that is edgy, testy, and self-reflective. Similarly, the historical and
political economic critique (the second realist position) outlines a hegemony of exclusionism,
whereby citizenship is rendered a one-way hardship of fighting for state recognition, of
gaining in from the fixed position of out, so to speak. It is the search for that dichotomy, in
the politics of anti-neoliberalism, anti-globalization, and anti-governmentality, which makes
us, which addicts us, to the preservation of a theoretical genetic code in which inclusion and
exclusion are made into permanently incompatible genes.

I want the open-ended option of the discursive position to be the right political choice.
I want the discursive force that realizes the trauma of citizenship in the form of the
included-out to open up another kind of future, one that sees citizenship as politics as such, in
its most originary meaning: that is, politics without guarantees. No doubt, the techniques of
law, of the immigration police, and of softer kinds of social and economic engineering are
indispensable for the border regime that regulates citizenship. But we tend to forget the
contingency of everything that appears. We forget that the distinction between inclusion and
exclusion, utilized as a guaranteed marker of what qualifies political existence (or not), can
act as the trigger for its own transgression, that is, as an indicator of a possibility for
politicization, but the kind that, to echo Stuart Hall, doesn’t come with guarantees.

In Logics of Worlds, Alain Badiou (2009) coins the state of “the inexistente” to mark the
contingency of everything that appears. He writes: “Every object, considered in its being as a pure multiple, is inexorably marked by the fact that in appearing in this world it could have also not appeared” (322). By that he means the inexistent is in fact a type of (political) existence, not its negation, whose essence is that it appears as a “reserve of being” withdrawn from naked appearance (322). And that marks a necessity of contingency for every existence (Bosteels, 2011, 244). Every existence, therefore, when singularized, reveals the specific elements that mark its inexistence in reserve. And Badiou insists that this state of inexistence is not permanent. Rather, it is imminent, carrying the potential to traverse the continuum from inexistence to actual political existence (Badiou, 2008). Badiou himself uses the examples of the “Indians” as the inexistent proper to the world of “Quebec-between-1918-and-1950,” and the workers as the inexistent belonging to the world of the Paris Commune. They were the ones who reveal the contingency of the objective order of the civil and political rights secretly reserved for the Quebecois and the bourgeoisie respectively (see Bosteels, 2011, 245).

Every refugee, every migrant, every member of a split family across borders, and every ethnic immigrant, when captured by a specific legal apparatus of control, a specific economic movement acting as a disciplinary force, in fact marks their existence in the form of the inexistent (or what I call the included-out). While they are the semi-colons, the asterisks, and the parentheses that are constitutive of an ongoing speech whose destiny is yet to be inscribed, I suggest that they are better understood in the more dynamic light of the included-out, or of imminent inexistence. By the same token, every member of the national body, every citizen who settles, who has “made it,” so to speak, can trace their existence by way of measuring the degree of their existence within the national body, that is to say, by marking the extent of their inexistence.

What might it be like to conduct that kind of politics of citizenship, one which can allow
us to imagine mobile subjectivity pressed-up by proximate lines of opposite forces of belonging and unbelonging? With the realization that the structure of belonging can never be fully or trans-historically fixed, we recognize that there is always a certain sliding of the symbolic border, always a margin not yet stabilized in the punctuated flow of people and things, always a potentiality. There is always something about citizenship left unanchored, always someone who is constitutively included-out, whose very existence the identity of a people on the move depends on, and which is absolutely destined to return from their excluded position outside the management field of governmentality to trouble the dreams of those who are comfortably inside.
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Notes

1 In June 2014, the ominous situation lodged in the metaphor of a “cocked but not-yet-fired rifle” materialized in the form of a White Paper entitled The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region issued by the State Council of the Central government. The document was widely seen as the Central government’s response to public demand in Hong Kong for Beijing to loosen its tight control over the fate of universal suffrage, and broader political reform, in the territory. But it backfired, as the document drew public ire, resulting in a historic march of over 51,000 people on July 1, 2014. (Each year on that date, there is a march to mark the handover and public dissatisfaction of governance since the handover). The full text of the White Paper is available here:


2 The full text of Article 24 of Hong Kong’s Basic Law is as follows (available at:


Residents of the Hong Kong Special Administrative Region ("Hong Kong residents") shall include permanent residents and non-permanent residents.

Article 24: The permanent residents of the Hong Kong Special Administrative Region shall be:

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<td>(1)</td>
<td>Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;</td>
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<td>(2)</td>
<td>Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;</td>
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*(3)* Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);

(4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;

(5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and

(6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

The above-mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode.

The non-permanent residents of the Hong Kong Special Administrative Region shall be persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the Region but have no right of abode.

3 Article 158 of the Basic Law:

“The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.

The courts of the Hong Kong Special Administrative Region may also interpret other
provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.”

4 The Hong Kong colonial Government adopted the “Touch Base Policy” in November 1974 as an attempt to halt the influx of immigrants from Mainland China in the late 1960s and early 1970s. The policy allowed immigrants from Mainland China who reached the urban areas and met their relatives to register for a Hong Kong Identity Card. Those who were intercepted at the border would be repatriated back to the Mainland immediately. However, the policy failed to halt the influx of immigrants, and was abolished by the Hong Kong Government in October 1980.