

Hong Kong's Umbrella Movement

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Since late September 2014, thousands of protesters have occupied the main thoroughfares of Hong Kong and pressed demands for, inter alia, a genuine election of the Chief Executive of the Hong Kong Special Administrative Region (“HKSAR”) in 2017. The police initially responded with tear gas, to which the protesters defended themselves with umbrellas, hence giving the movement its popular name. The occupation has lasted for more than a month since then, and there is still no sign of resolution. This article will analyse the causes of this movement and offer some thoughts on its implications for Hong Kong and China.

The Background

The campaign for democracy in Hong Kong has a long history. It can be traced back to the abortive Political Reform undertaken under colonial era by Governor Mark Young in the 1950s. Whereas Britain has adopted a fairly standard package of democratic reform for most of her colonies in the process leading to decolonization, no major constitutional reform was introduced in Hong Kong after the War and any attempt to do so was abandoned due to strong opposition both from the business sector in Hong Kong and from Beijing.¹

The push for democracy regained momentum in the early 1980s and sparked into a full-fledged movement soon after the ratification of the Sino-British Joint Declaration under which Hong Kong was to be returned to China and would become a Special Administrative Region on 1 July 1997. Since the mid-eighties, the pace and scale of the democratic movement has consistently been on the political agenda in Hong Kong.

Between 1985 and 1987, there were strong public demands for the introduction of direct election to the Legislative Council (“LegCo”). The earliest possible occasion was 1988, but the call for direct elections was rejected by the then British government in 1987, allegedly due to strong opposition from China, on the

* I am grateful to the helpful comments of Professor Jacques deLisle on an earlier draft of this article. This is an expanded version of an earlier public speech given at the University of Pennsylvania.

¹ See Steve Tsang, *Government and Politics* (Hong Kong University Press, 1995), pp 82, 125; Steve Tsang, *A Modern History of Hong Kong* (I B Tauris, 2007), p 208, and *New York Times*, 29 Oct 2014.

grounds that the Basic Law was still in the process of drafting, and that any democracy in Hong Kong should be given by the Chinese and not by the British.

The public then turned its mind to the next legislative elections in 1991. As a result of the 1989 suppression of student movement at Tiananmen in Beijing, the Hong Kong Government, probably with the tacit agreement of China, agreed to introduce direct election for 18 out of 60 seats in LegCo in 1991. This was the first time direct election to the LegCo was introduced in Hong Kong, albeit for less than one-third of its members.

Since then, the directly elected component has increased, but today still only 50% of the members of LegCo are returned by direct election from geographic constituencies. The remaining half of the members come from “functional constituencies”, which comprise of a very small number of voters and represent largely large business sectors.

Broadly speaking, the political spectrum in Hong Kong can be divided into two major camps: the pro-establishment camp and the pan-democrats. For most of the geographic elections, the pan-democrats have until recently consistently secured about 60% of the popular vote. Yet due to the composition of the LegCo, they represent less than 30% of the votes in the Legislature. Pro-establishment candidates consistently win the majority of the seats returned by “functional constituencies”. The split vote system, under which any bills or amendments or motion debates sponsored by individual members could only be passed by a majority of each of the two constituencies in the LegCo as opposed to a simple majority of the whole house for Government-sponsored bills, further diminishes the influence of the popularly elected members.

While there have been some democratic reforms to the process for selecting the legislature over the years, the same had not been true for the powerful head of Hong Kong’s government. Before 1997, the Governor of Hong Kong was always appointed by London. After Hong Kong’s return to China in 1997, the Chief Executive (“CE”) was to be selected by a small group, the Election Committee, which has increased its size from 400 for the first term to 1,200 for the third term. The Election Committee is comprised largely of representatives of different functional groups—essentially the functional constituencies for LegCo elections—with a relatively small number of constituents and a strong bias in favor of the business and pro-China factions.

Thus, Hong Kong has a strange political system. Those who are in power have no popular mandate, and those who have a popular mandate have no power. Not surprisingly, democracy and accountability have continued to dominate the political agenda well after the changeover to Chinese rule.

Promises in the Basic Law

The Basic Law, which was promulgated in 1990, provides that the ultimate aim is to have a fully elected LegCo and a CE returned by universal suffrage. It then sets out the composition and the selection process for the first three terms of the

LegCo and the CE after the establishment of the Hong Kong Special Administrative in 1997, and further provides that the method of formation/selection could be changed after the third term if there is a need to change. It is for the Central Government in Beijing to determine if there is such a need. Thus, the earliest possible time for any change under the Basic Law was in the third term, that is, around 2005.

While there were continuous campaigns to bring forward the realization of the ultimate goal of having full direct election for both the LegCo and the CE in the 2000s, the Central Government has repeatedly decided that there was no need to change the method of selection of the LegCo and CE. This has become a thorny issue every time there was an election. Hopes for relatively quick progress to fully democratic elections have been disappointed. Small progress has, however, been made.

In December 2007, the NPCSC ruled out direct elections for 2012, but it also unexpectedly stated in its decision that there might be direct election of the CE in 2017 and thereafter for the LegCo, which means 2020 at the earliest. To many people this was a great disappointment, as there would be no full direct election until twenty years after the changeover. Nonetheless, for the first time there was a timetable.

In 2012, C.Y. Leung, who was the second choice of Beijing, surprisingly won the election after scandal-damaged Beijing's initially preferred candidate. Leung won with a bare majority of 689 votes from the 1,200 member Election Committee. His small mandate once again highlighted the unsatisfactory nature of the Election Committee.

The 2017 Election of the Chief Executive

Since 2012, the focus of the community has been on the 2017 election of the CE. The main issue is the nomination process, as under Art 45 of the Basic Law, the CE "shall be elected by universal suffrage upon nomination by a broadly representative nomination committee in accordance with a democratic process." The main questions are: What is a broadly representative nomination committee? What constitutes a democratic process? Can nominations be made other than by the nomination committee?

These issues turned out to be highly charged. The Hong Kong community has become highly divided and polarized, especially during the months preceding the NPCSC's August 31, 2014 decision concerning the process for nominating CE candidates. At one end of the spectrum, the conservatives wanted to keep the Election Committee from the previous CE election cycles as the nomination committee for the 2017 election and even raise the threshold for nomination (which had been well below half of the committee in previous cycles). At the other end of the spectrum, many people have no confidence in the Election Committee model. So they advocated for civic nomination, that is, a person who has secured a certain amount of popular endorsement from the voters shall

become a candidate. Another proposal was to have nomination by political parties that will have secured a certain percentage of votes in the LegCo election in 2016.

The Hong Kong government began a consultation process in December 2013, which was concluded in May 2014. During the consultation period, the Central Government in Beijing made it clear that the CE has to be “patriotic,” that the nomination has to be made by the nomination committee and not any other body (thereby excluding civic nomination), and that the nomination committee’s composition should be modeled after the Election Committee, notably keeping the Election Committee’s structure of four equally represented sectors (industrial, commercial and financial, the professions, labor, social services, religious and other, and current and former political officeholders) that generally track the functional constituencies for LegCo.

While the composition of the Election Committee appears at its face value broadly representative, this is far from the case. Apart from the 39 members of the LegCo who are returned by universal suffrage, the remaining members of the Election Committee are returned by a small number of voters. The size of the voters of each subsector is an average about 1,000, making a total size of the voters less than 240,000. Many of the subsectors comprise only corporate voters, or a majority of corporate voters, and the criteria to become a voter are entirely unclear. Thus, for example, the Fisheries and Agricultural subsector returns a total of 60 members to the Election Committee. The subsector comprises about 83 voters, all of whom are organizations. Many may look to have the same or very similar memberships, such as Aberdeen Fisherman Friendship Association, Aberdeen Fisherwomen Association, Hong Kong Fishermen’s Association and Hong Kong and Kowloon Fishermen Association Ltd. There is no clear procedure of how an organization becomes a voter. Thus, it comes as no surprise that there is no confidence that this body would be representative and would make a nomination that could represent the general view of the public. The contrived membership also means that it could easily be manipulated.

While not everyone supports the proposal of civic nomination, it is fair to say that there is a fair amount of consensus in the Hong Kong community that political screening at the nomination stage is unacceptable. Civic nomination was initially perceived to be a negotiation tactic. However, as time passed, it has become a principle in itself. It is also a commonly held view that if there were no genuine election in 2017, Hong Kong would become ungovernable given the level of public expectation for a genuine election.

Thus, during the consultation process, there were the moderates who accepted the principle that there should not be unreasonable restrictions on nomination, but considered that this could be achieved within the parameters set by the Central Government in Beijing without recourse to civic nomination or political party nomination. Many also recognized that the way forward has to be to forge some consensus between the moderate faction of the pan-democrats and the liberal faction of the pro-establishment group. By the end of the consultation period in May 2014, there were no fewer than ten different proposals which could broadly be described as falling within this moderate middle ground. While some of them

are fairly promising or innovative, none of them has been seriously examined by the public.

The Occupy Central Movement

At the same time, at around the end of the year 2012, Law Professor Benny Tai of the University of Hong Kong, along with two others, started the Occupy Central Movement. They were worried that the eventual model for selecting CE nominees would be a conservative model with political screening, and they wanted a model without unreasonable restrictions to be in place for 2017. Benny Tai and other of his generation started campaigning for democracy in HK since he was a young university student. He is now in his mid-50s and is still campaigning for democracy. To some extent, he represents a group that sees itself as having waited for long enough. Their patience is running out.

Occupy Central—with “Central” being the name for the area in Hong Kong that is at the heart of the financial district and adjacent to key government offices—was intended to be a movement of civil disobedience. Tai and other Occupy Central leaders have advocated for a peaceful movement. “Occupy” is also intended to be the last resort. Following Tai’s plan, there were to be five rounds of civil discourse on various political models, and at the end the participants would make an informed choice of one of the models proposed by the community. They would then adopt that model as a benchmark to measure against the model that the Hong Kong Government eventually propose, and would conduct a popular poll (or referendum) to decide if the government’s proposal was acceptable. If not, and if Tai’s group had the popular mandate to go ahead, then, and only then, would they move to Occupy Central as a last resort.

In light of its destructive nature, Occupy Central is controversial in Hong Kong, even among the pan-democrats. Yet it did open up a window for the moderates to seek a middle ground. Unfortunately, things did not turn out as planned. In June 2014, after the completion of the consultation process by the Hong Kong Government, Benny Tai decided to put the fifteen models that had been proposed to a vote among those who had participated in the previous rounds of “civil discourse”, with a view to selecting three models for popular vote. Unfortunately, all three models that were chosen included an element of “civic nomination,” thus leaving the public who wanted to participate in the unofficial balloting with no choice but to vote in favor of civic nomination (or not to vote at all). The process was subject to widespread criticisms from left, right and centre, charging that the process that limited the public to a choice among three similar models itself was an example of “political screening” that Tai and others had condemned as a flaw of any nomination process that did not allow for civic nomination. Support for Occupy Central was at its lowest at that time.

A Turning Point: The Central Government’s White Paper

Then the Central Government published a White Paper on Hong Kong.² Unlike Beijing's previous stance, the tone of the White Paper is very much that the extent of autonomy is the extent that the Central Government is prepared to tolerate. The White Paper also includes a controversial part stating that judges, being part of the administration, have to be patriotic. To be fair, there is nothing of substance that is new in the White Paper. But the concern in Hong Kong was not the content but the way the message was conveyed.

The White Paper sparked widespread criticisms and worries in Hong Kong, especially because it touches upon basic values such as the rule of law and the independence of the judiciary. This has resurrected popular support for Occupy Central. In late June, when Occupy Central put forward the three chosen proposals for popular voting, about 800,000 people turned out to vote. This turnout was all the more impressive because it occurred despite various attempts to jam the computers through which participants voted in the online poll, and political threat about the consequences for Hong Kong of even an unofficial referendum calling for political change that Beijing would not accept. The unexpectedly large turnout gave a new push and strong legitimacy for the claim for civic nomination, thanks to the Central Government.

The NPCSC Decision

The CE submitted his report on the Hong Kong Government's consultation process to the NPCSC in July 2014. At the end of August, the NPCSC decided that the composition, the number of members and the method of formation of the Nomination Committee for 2017 will be the same as (and not just designed with reference to) the Election Committee in 2012, and each candidate shall need the endorsement of over 50% of the members of the Nomination Committee, which is much higher than the 12.5% that was adopted for nomination in the previous Election Committee.

This NPCSC decision is more conservative than the community had expected. Not only does it exclude any possibility that a candidate favored by the pan-democrats will be successfully nominated, it also leaves little room for the middle ground options that had been discussed in Hong Kong during 2013 and earlier in 2014. The NPCSC decision leaves the pan-democrats with limited choices: either use their representation in LegCo to vote down the electoral legislation that the Hong Kong Government would introduce to implement the NPCSC decision (something the pan-democrats could do if they stuck together because the legislation will need a 2/3 majority in LegCo to pass the proposal for constitutional reform), or to take the issue to the streets.

² PRC, White Paper on *The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region* (State Council, the People's Republic of China, 10 June 2014), <http://www.fmccprc.gov.hk/eng/xwdt/gsxw/t1164057.htm>.

The Hong Kong Government's plan apparently was to make use of the time before the proposal is to be voted by the LegCo to divide the pan-democrats. All that the government would need is about five defections among the pan-democrat legislators to secure the requisite 2/3 majority.

The Occupation

Following the NPCSC decision, dissatisfaction continued to build up in Hong Kong. In late September, students started a boycott of classes. They started to demonstrate outside the Government headquarters at Queensway, and as the demonstration gathered momentum and support, they asked where the Occupy Central people were. By the end of the first week of the boycott, at the end of September, Benny Tai and his group had no choice but to announce bringing forward the date of Occupy Central to join the student protestors.

When "Occupy" started, the police tried to contain the initial group of demonstrators and to stop other people from joining, but this led to even more people coming to surround the police. Very soon the protestors spread to occupy the main roads. When police started using tear gas, somewhat indiscriminately, against the protestors, this has brought even more people to support the students, and the protestors' use of umbrellas to deflect pepper spray gave the movement its popular name. Very soon, instead of occupying just Central, people started occupying the shopping districts at Causeway Bay and Mongkok, and some called the movement Occupy Hong Kong. It had soon become clear that no one person or organization is or could be in control of the movement any longer.

The students, who are at the forefront of the movement, want NPCSC to withdraw its August decision, to re-start the consultation process and to allow civic nomination. After the use of tear gas by the police, they also called for the resignation of the CE. In reply, the government took a firm stance that the electoral process has to comply with the Basic Law, meaning no civic nomination. At the same time, the police have adopted a more conciliating attitude and did not make any serious attempts to clear the protestors from the occupied areas.

As the occupation entered its second and third weeks, the blockage of the main roads had caused considerable inconvenience to the public, and there was an increasing sense of dissatisfaction among the public who are affected. Some resorted to self-help and ended up in confrontations with the protestors. There was also the so-called Anti-Occupy Central Group, which was formed earlier in the year to countenance the Occupy Central Group and which was believed to be heavily financed by the Central Government. There were various violent confrontations between the protestors and the Anti-Occupy Central Group, and the Government was accused of not attempting to stop the violent behavior of the Anti-Occupy Central Group or their supporters. The Government at first agreed to hold talks with the students on 13 Oct 2014, but it unilaterally cancelled the talk at the last minute.

As public dissatisfaction of the inconvenience caused by the occupation of major thoroughfares continued to grow, the police have successfully removed the

barricades without meeting serious resistance. Yet the protestors very soon returned to the occupied areas.

On 21 October, the Government finally met with the students, who made four demands: (1) withdrawal of the NPCSC decision in August 2014; (2) endorsing civic nomination for the election of the CE; (3) abolition of functional constituencies; and (4) a clear timetable to achieve these objectives. There was no longer a call for the resignation of the CE, though the demand for abolition of functional constituencies was newly added (although this issue has been a long standing issue in the democratic reform of the LegCo). In response, the Government offered to submit a report to the Central Government setting out in an impartial manner the public sentiment that was expressed after the NPCSC decision in August 2014, and undertook to maximize the scope of representation in the Nomination Committee in the further round of consultation. It also offered to continue the dialogue and assured the protestors that the Government would continue to work towards further constitutional reform after 2017. The Government responses were rejected by the students as being too vague and non-committing, and they decided to stay in the occupied areas.

At the same time, some pro-China groups successfully obtained an injunction order from the High Court compelling the protestors to clear the occupied areas. The protestors refused to comply with the injunction order, and were criticized for endangering the rule of law. The Government has not taken any action to enforce the injunction order, at least not until the court has authorized the police to enforce the civil injunction order. At the end of October, Benny Tai decided to return to the University to resume his teaching, whereas the students planned to petition the Central Government during the Asia-Pacific Economic Pact meeting in November. Some members of the pan-democrats also proposed to urge a few elected members of the LegCo to resign and try to get elected again on a single issue platform of nomination as a form of referendum, a controversial move that they have adopted a few years ago.

At the Crossroads

Since the third week of the occupation, there was a bit of a stalemate and growing fatigue among both the protestors and the wider community. It is difficult to sustain a movement by continuous blockage of main roads, as the inconvenience to the public means that the movement is losing popular support. The protestors' refusal to comply with the injunction order of the court has also attracted criticism from those who sympathize with them, as it is considered to be a blatant denial of the rule of law. The protestors demand civic nomination, which the Central Government would not accept and which the Hong Kong Government has no power to agree. On the other hand, it is difficult for the students just to retreat empty-handed, and repeated calls for their retreat are likely to be futile. Unless the protestors are willing to back down from their demands or they are offered at least something so that they are able to find an opportune excuse to retreat, it is likely that they would continue to stay at the occupied areas.

On the part of the Hong Kong Government, its hands are tied. The political reform is basically decided by the Central Government. The occupation has caused considerable inconvenience to the community and begun to have an impact on the economy. The Government's choice has been either to use force to clear the site at some point, or to talk out the protestors. Yet any attempt to use force to disperse the protestors would predictably incite more public support for the movement. It is clear that the Government could not accede to the demands of the students/protesters and its tactic at some point was to drag on so as to wear out the protestors, especially when public dissatisfaction was growing. The Government could have played a more active role as a mediator between the students/protesters and the Central Government, but it seems to be hesitant to take up such a role.

Beijing has condemned the movement. It has not helped that the movement sometimes has been called the "Umbrella Revolution". "Revolution" touches a nerve in Beijing, where wariness of the "color revolutions" elsewhere remains strong. Beijing has accused foreign powers, notably the United States, of being behind the movement. Since mid-June, Beijing has raised the level of concern about the unrest in Hong Kong to be one of "national security." Thus, for Beijing, Occupy in Hong Kong is not about democracy but national security, although suppressing the movement by the People's Liberation Army is apparently not on the agenda of the Beijing leaders, as first this is unnecessary since any forceful suppression could be done by the police in Hong Kong, and secondly such move would create more problems than it could have solved.

How will the movement unfold? Even if the students were prepared to retreat, the root causes leading to the occupation would not be resolved. On the face of it, the immediate triggering factor is the NPCSC Decision in August imposing a restrictive nomination regime. Deep down, for some of the protestors, there is frustration that they have been campaigning for democracy for over 30 years and they are not prepared to wait any longer. For some, they want to be in greater control of their lives at a time when things seem desperate for them, especially their economic prospects. Property prices have gone up, the gap between the rich and the poor keeps widening, and the prospects for high-paying employment have dimmed, leaving many young people with little hope for their future. For some, it is frustration with the incompetence of the government generally or with the CE himself, who has been plagued with scandals after scandals (including a recently exposed, previously secret multi-million dollar payment from an Australian company before he became CE) and a political tin ear (including a recent interview in which he opposed full democracy in Hong Kong because it would give the vote to poorer people who demand more generous social welfare policies). These issues have to be addressed.

Despite the discontent in Hong Kong, Beijing is unlikely to change its decision. Its concern is, rightly or wrongly, stability in Hong Kong and foreign interference in Hong Kong. Stability is at the forefront of the mind of the Chinese leadership. At a deeper level, the issue of democracy in Hong Kong goes to what Beijing understands to be the meaning of the promised "high degree of autonomy" for Hong Kong. The Joint Declaration is, for Beijing, a unilateral announcement of its policies towards Hong Kong and not an agreement, as such, with Britain. Therefore, any foreign comments or interference with Hong Kong's affairs is an

interference with China's domestic affairs. Beijing's approach to the Basic Law is both historical (it has given more than what the British had given when they ruled Hong Kong) and political (the Basic Law has to be construed and understood in a way to serve the wider political ends of maintaining stability and prosperity). Liberal democracy as understood in the Western sense was never part of the promise in Beijing's view. Democracy is tolerated only to the extent that it is necessary to sustain the prosperity and stability in Hong Kong. Beijing's understanding of autonomy is that Beijing will not send its own cadres to rule Hong Kong, but Hong Kong has to be run by someone from Hong Kong whom Beijing trusts. This is the price for Beijing's granting Hong Kong a high degree of autonomy. Election has to be a process in which Beijing will know the outcome before the ballots are cast. Unfortunately, this is a contradiction in terms, and it has meant a sharp divergence in the understanding of the Joint Declaration and the Basic Law between the Central Government and the people in Hong Kong.

The Hong Kong Government's hands are tied, but it does not mean that there is nothing the government can do. Yet it has so far shown a singular lack of leadership or moral courage. It has been suspected that the Central Government does not have a full picture of the sentiment in Hong Kong, and its repeated statements of foreign interference and Hong Kong trying to gain independence are entirely out of touch with the reality in Hong Kong. Thus, the Government's offer to submit a report to the Central Government setting out fully and impartially the public sentiment since August 2014 is a positive step, albeit a step too little too late. While Beijing is unlikely to change the framework of its August decision, could modifications of some part of its decision, such as lowering the threshold from the proposed 50% to the previous 12.5%, coupled with other promises to widen the representation of the Nomination Committee, be a way out? At the very least, could a meeting be arranged between leaders of the Central Government and the students as a means to provide students with an excuse to retreat from the occupied area? However, these could only be achieved if the Hong Kong Government, and those who have the ears of Beijing, is prepared to persuade the Beijing leaders, and this is not forthcoming. Further dialogues with the protesters are essential, but unless both sides are prepared to work harder and to compromise, such dialogues would unlikely lead to any fruitful result.

Thus, we are now at a deadlock and a crossroads. The Chinese propaganda has described the movement as a "riot",³ the same term that it used to describe the Tiananmen event in 1989 in April that year. Would there be a peaceful solution, or would it end up as another bloody and violent page in history? Only history could tell, but at this stage, there is little cause for optimism.

³ *Global Times*, 13 Oct 2014.