

TESTIMONY

The Hong Kong Legislative Election of September 12, 2004

Assessment and Implications

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Testimony presented to the Congressional-Executive Commission on China on
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Summary

The recent Hong Kong election was noteworthy for:

- Very gradual democratization;
- Recent new restrictions on the pace of future democratization that clearly frustrate a majority of Hong Kong people;
- Chinese central government fear of the democracy movement leading to repressive tactics that are largely legal but ultimately contrary to its own interests;
- Some unsettling incidents of legal and illegal intimidation prior to the election;
- A high turnout election in a calm atmosphere with an outcome that was not affected by the incidents;
- A voting majority above 60% for pro-democracy candidates;
- An electoral system that nonetheless translated the pro-democracy majority vote into a majority of seats (35/60) for pro-government conservatives;
- A clear mandate for a strategy of democratization and moderation;
- Weak, semi-competent, scandal-ridden political parties poorly representing their social bases;
- A democracy movement caught between a rising, frustrated consensus on the necessity of more rapid democratization and a deepening consensus against direct confrontation with Beijing;
- Deep division in China over proper policy toward Hong Kong;
- Considerable hope in Hong Kong for an understanding that accommodates both Hong Kong's democracy aspirations and China's security concerns;
- Policy proposals in the U.S. that expressed understandable frustration but risked undermining the democracy movement.

Gradual democratization/Absence of democracy/Rising frustration

Hong Kong has been experiencing very gradual democratization. Up to the time when China demanded Hong Kong back from the British, 100% of legislators were appointed by the British Governor. Effective with this election, 0% of legislators are appointed.

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Notwithstanding this gradual improvement, the system has not progressed to the point where even very popular views can effect structural change or ensure policy change. China's central government handpicks the Hong Kong Chief Executive through a carefully chosen small committee that has no autonomy. The central government has less control over the legislature, but the elitist functional constituencies constituting half of the legislature (30/60) heavily weight electoral outcomes in favor of candidates who follow the Chief Executive's wishes; that gives the Chief Executive effective control over most policy issues.

Dirty events/Clean election

A number of intimidating incidents and violations of people's freedoms occurred prior to the election. Beijing efforts to contain the democracy movement have been directed primarily not at this 2004 election but at staunching pressures for universal suffrage elections in 2007-8. Chinese officials and media announced in late 2003 and early 2004 that Hong Kong could only be ruled by patriots and put a newly restrictive interpretation on "patriots." The Politburo Standing Committee issued a quasi-constitutional "interpretation" of Hong Kong's Basic Law that barred universal suffrage elections in 2007-8. (China has the unambiguous legal right to make that decision; the issue is not whether it is legal but whether it is sensible policy.) A Chinese fleet sailed through Hong Kong harbor for the first time since 1997, and the Peoples Liberation Army held its first-ever military parade in Hong Kong. Equally prominent were carrots designed to win favor from Hong Kong people, most notably measures that successfully reflatd the Hong Kong economy, visits by Olympic athletes and a finger of Buddha, conciliatory albeit uncompromising visits from Beijing dignitaries, and gradually increasing willingness to consult quietly with pro-democracy figures.

Second, and quite separately, there was also a series of human rights and democracy violations affecting the current election whose origin and intent were more obscure. There were isolated reports of attempts from people on the mainland side of the border to influence votes, including demands for cell phone photographs of their completed ballots. Three radio station hosts resigned after alleged intimidation. A Democrat Party candidate was imprisoned for soliciting a prostitute. Office fronts belonging to three pro-democracy figures were vandalized. Some commentaries lumped such incidents together as part of a concerted campaign by Beijing to influence the election.

The reality behind these violations was more complex. Some were unambiguous violations of ambiguous origin. Some may or may not have been actual violations. The head of a movement opposing further landfills in Hong Kong's harbor was threatened, resigned his position, and left Hong Kong. The vandalism definitely occurred. In all probability there were some actual cases of people in China trying to impose voting choices on Hong Kong people.

However, unlike the clear effort to repress demands for universal suffrage in 2007-8, the origins and intents of these violations related to the 2004 election remained unclear. It is

difficult to imagine Beijing taking a serious interest in the Save the Harbour movement, easier to imagine action by enraged local business interests, and successor Christine Loh seems not to have been intimidated. Radio host Albert Cheng, who had been physically attacked in the past after for publicly denouncing triad criminals, said he resigned because of threats, but he then ran for election, giving his abrasive views a much bigger megaphone, and won. Apparently he felt intimidated about one job but not the other; he certainly did not moderate his views. Radio host and former conservative politician Allen Lee resigned following what he believed was an intimidating phone call that referred to his virtuous wife and beautiful daughter; it transpired that the phone call came from a retired Chinese official, Cheng Sousan, who had made such calls to quite a number of people, who apparently didn't feel threatened, and Beijing immediately identified the person in question. Was this intimidation, or an elderly gentleman seeking news?

Democrat Party candidate Albert Ho was arrested for soliciting a prostitute. Fearful democrats could reasonably infer malice when a single Democrat was arrested at this particular time although numerous other politicians, officials and executives were vulnerable to arrest for the same offense over the years and few or no others have been arrested. On the other hand, despite the scandal, the Hong Kong government certified Ho as a candidate even though it might have been able to interpret the law restrictively. If the goal was to hurt the Democrats in the election, Albert Ho was a strange target, since nobody gave him any chance of election. Was such an arrest part of a grand Beijing intimidation plan or some local prosecutor trying to impress his boss?

I do not know conclusively whether Beijing strategy or local political entrepreneurship or business vengeance was behind any of these cases. Anyone who claims to know must elucidate details and show evidence. It is difficult not to notice that Beijing's repressive posture regarding 2007-8 exhibited a very clear strategy, with sticks and carrots clearly proportionate to the (regrettable) goal it sought to achieve, whereas the incidents affecting the 2004 election made no strategic sense either individually or as a group. To put it another way, Beijing has so far taken a clear repressive stand on the issue of structural changes in the electoral system, but there is as yet no persuasive evidence that it is interfering with the election process itself.

Third, there were occasions of election day incompetence. Long lines formed at some polling booths and some ballot boxes were not big enough to accommodate the consequences of larger turnout, larger ballots, and crumpled ballot sheets. There is an argument that pro-democratic voters tend to vote later and therefore may have suffered more discouragement from late-day delays. Conversely, there are reports of more votes than eligible voters in some of the functional constituencies won by democratic groups.

Through the fog of conflicting evidence on such incidents, five things stand out.

- The functional constituency structure is designed to allocate seats disproportionately to conservative forces and did so.
- No commentator of standing, including the most partisan, has argued that any of these instances of intimidation, rights violations or incompetence significantly

affected the basic shape of the election outcome. Exit polls and election results tallied to the degree expected in a proper election. The balloting process was basically clean and calm despite the problems.

- In longer perspective the main consequence of the anti-democratic incidents has probably been to broaden and deepen the appeal of the democracy movement.
- There has been a permissive atmosphere in which threatening incidents have become more common than in the past. The Hong Kong government has an indisputable responsibility for ensuring an atmosphere of rigorous observance of people's rights, and it will at some point have to provide a thorough account of how vigorously it protected rights, what scale of investigative resources it devoted to identifying potential malefactors, and most importantly whether the permissive atmosphere disappears.
- The body of Hong Kong's freedoms of speech, press, religion, assembly, rule of law and so forth, remains intact, but has accumulated dents and scratches at a rate that raises concerns.

The real issue for Hong Kong democracy is not the detail of this legislative election but whether there will be substantial, early progress toward a system that would give Hong Kong people more direct leverage over the officials and decisions that affect them or whether, on the contrary, democratization will be indefinitely stalled.

The election outcome

The election itself enjoyed a record turnout of 55.6% and a calm atmosphere. Clearly a majority of Hong Kong people felt that their votes mattered and that they were comfortable voting.

Pro-democratic groups got over 60% of the vote but only 25 of 60 seats. Beijing takes heart from conservatives' continued numerical control of the legislature, while democrats demonstrated, and slightly increased, their dominance of the popular vote. Among the conservatives, the Liberal Party gained substantially and won its first ever popularly elected seats. Much of its popularity was due to the fact that it has not been a conservative rubber stamp. Liberal Party leader James Tien resigned from the government last year to oppose the controversial anti-subversion law, and the Liberal Party platform calls for universal suffrage elections in 2012. Hence the Liberal Party's gains demonstrate simultaneous support for wider suffrage and for moderate strategies.

While the results send a strong message to Beijing that Hong Kong's majority wants wider suffrage, they also demonstrate a continued embrace of moderation by a large center of gravity of the electorate. There have been huge controversies over the anti-subversion bill of 2003 and over suffrage for the 2007-8 elections, but and the Hong Kong majority is standing firm about these issues but is equally firm about avoiding gratuitous confrontation.

An important caveat to the electorate's embrace of moderation comes from the elections of abrasive former radio commentator Albert Cheng and disruptive Trotskyist "Long

Hair” Leung, which constitute a warning that segments of public opinion can take a different turn if aspirations are frustrated too long. Cheng is the Ralph Nader of Hong Kong and Leung is analogous to a leader of the old 1960s “Weatherman” faction of Students for a Democratic Society. Conservative groups associate opposition to democracy with “stability,” but the election of “Long Hair” indicates that rigidity and social frustration could cause future instability.

Collectors of historical ironies should note that the single most unsettling aspect of this election for Beijing was Hong Kong’s first-ever election of a disruptive Marxist, and the most upsetting thing for Hong Kong’s democrats was Beijing’s insistence on further entrenching rules that give special advantages to Hong Kong’s leading capitalist interest groups.

An immature party system

It would be a mistake for either Washington or Beijing to view the election results as a clear image of the electorate’s sentiments. Not only are the rules such that democratic groups’ majority of the popular vote translates into a minority of seats, but also immature political parties only partially translate the breadth and intensity of democratic sentiment.

Democratic political parties are split and much weaker than the social forces they represent. There are several distinct parties among the democracy advocates. The Democratic Party of Hong Kong has a total of 638 members (according to its website on September 15, which cites July 2004 figures) and negligible ability to raise funds from Hong Kong citizens. It is deeply divided between an elitist leadership and a populist base, and between older leaders who are confrontational toward China and younger supporters who are far less so. It lacks distinctive policies on the principal social and economic issues facing Hong Kong.¹

For some years new leadership, under Yeung Sum, has run the Democratic Party of Hong Kong, with Martin Lee continuing to serve as a primary spokesman toward foreigners because of his exceptional command of the English language. In addition, other democratic groups have arisen. Audrey Eu is now the most popular figure in the democratic movement, running first in popularity among legislators compared to Martin Lee’s seventh, and her Article 45 Concern Group has, according to HKU POP polls, slightly exceeded the Democratic Party in name recognition among the electorate.² Political figures like Audrey Eu, Ronnie Tong, Alan Leong, and Margaret Ng are coalescing into what may become a formal political party.

The conservative DAB, which won the most seats, is better organized than any other party. Its links to its constituents are based on detailed study and emulation of the major U.S. parties. DAB events are well funded due to the contributions of the local

¹ See for instance its website statement of education policy, a subject where major reform is a vital issue for Hong Kong’s future: http://www.dphk.org/e_site/index_e.htm

² See the Hong Kong University Public Opinion Poll surveys of August 9-16, 2004, and September 14, 2004. <http://hkupop.hku.hk/english/release/release241.html>

subsidiaries of Chinese state enterprises—a large advantage in any polity. It receives loyal support from the trade union leadership. (Over 90% of the union functional constituency vote went to conservative groups.) But it has lost credibility from support of last year's government-proposed anti-subversion law, from abandonment of past promises to advocate democratization, and from some deeply ideological leadership. In the previous election, it was severely set back by leadership scandals, and its improved position this time is largely a bounce-back from those scandals.

The issue of outside influence over Hong Kong campaigns continues to have great salience. Many in China charge that the democratic movement is manipulated by the United States and support their charges by citing Martin Lee's long reliance on an American strategy advisor, his vigorous solicitation of foreign support, and his pre-1997 characterization of laws restricting foreign political party donations as a human rights abuse. Grants from American NGOs, his warm welcome in Washington in March of this year, and the National Endowment for Democracy's presentation to him of a democracy award modeled on the statue of freedom in the 1989 Tiananmen Square demonstrations have been emotionally gratifying for some Americans, but their main consequence has been to bolster the hardliners in Beijing and to fuel controversy inside Hong Kong's democracy movement. In recent years, Lee's foreign support has undoubtedly hurt his party more than it has helped. Every conversation I have about Hong Kong in China, even with the most sympathetically liberal figures, quickly homes on this issue of U.S. manipulation.

Having said that, anyone who has lived in Hong Kong, as I have, knows that those long lines of middle class families demonstrating against tough anti-subversion laws and in favor of greater democratization come from the heart and could not imaginably be mobilized by foreigners. U.S. favoritism toward Lee may in fact have weakened the ascent of stronger leaders in his own party and also slowed the competitive rise of parties more likely to be able to consolidate the democratic movement. A lesson from the business world: any party that depends for long periods on foreign NGO donations is never going to learn to raise money itself. The rising stars of the democracy movement are not those with particularly strong foreign connections. The charge of U.S. domination of the democracy movement is false, but our own actions make it difficult to convince a skeptical observer.

Mainland Chinese influence on the other hand is everywhere manifest. Mainland officials authoritatively exhort members of the Chief Executive Selection Committee to back Tung Chee-hwa. While the subsidiaries of mainland firms operating in Hong Kong are local entities, the extent to which they finance the DAB by funding its events certainly gives Beijing great leverage. DAB leaders reverse their policy positions, including on democratization, when Beijing demands it.

Where does Hong Kong go from here?

Hong Kong's future path will depend on the wisdom of leaders in Beijing and Hong Kong. Success, even if defined narrowly in classic Hong Kong terms as stability and

prosperity, will require compromise on both sides. Instability and decline will result from rigidity or confrontation on either side.

Hong Kong immediately after the election is quiescent. Conservatives among the leaders in China may see this as confirming their view that a combination of prosperity and firmness will squelch the democratic movement. Many Chinese as well as foreign experts recognize that as an illusion. There was a time when Hong Kong people were apolitical and obsessed with economic growth to the exclusion of political concerns. Two things have changed that. First, there is a pervasive sense among political aware groups that Beijing chose an ineffective leader for Hong Kong, then insisted on re-selecting him, and that Hong Kong's future therefore depends on Hong Kong people being given a chance to choose their leadership. Second, the Tung government's handling of the Article 23 controversy of 2003 created for the first time very focused popular fears about their freedoms. A Chinese policy of trying to push back the tide will not bring stability, whereas a policy of gradually channeling the tide will benefit all parties.

The center of gravity of Hong Kong opinion wants both moderation and democratization. It recognizes that confrontation with Beijing in the service of democratization is self-defeating, and hence it seeks to reassure. The most important democratic leaders in Hong Kong, including Martin Lee, have for instance recently been emphasizing their consensus acceptance of Chinese sovereignty over Hong Kong and also Taiwan. Some reached out to China by re-labeling the July 1, 2004, demonstration for democracy as a "celebration of civic society." From personal experience I can testify that most people in the democratic movement celebrate China's successes. But a clear majority also demands improvement of the current system and, if the policy of democratic reassurance fails to find partners in Beijing, political pressure will build up like steam in a covered kettle. When and how that steam will vent I cannot predict, but eventually it will.

While the strategy of reassuring Beijing while pressing hard for greater democracy provides the only strategy that has any chance at all of success for Hong Kong's democracy movement, there is no assurance whatever that it will succeed. That depends on politics in Beijing, and I cannot predict the outcome of that process. In pure policy terms, there is a great divide between the top leaders' current choice of a hard line and the view of large numbers of officials and scholars with expert knowledge of Hong Kong that the hard line is self-defeating. Policy analysis has suffered from what I call the Three Confusions: confusion of Hong Kong, where there is virtually no separatist sentiment, with Taiwan; confusion of the meaning of traditional lawful demonstrations in Hong Kong with disruptive demonstrations in the mainland; and confusion of the anti-China tactics of a few older democratic leaders with the moderate loyal sentiments of the overwhelming majority of the democratic movement. There is reason to hope that, with greater experience on the part of the new leaders, such confusions will dissipate.

Purely political considerations, however, dim the prospects for such intellectual clarity in the short run. Perceptions of Hong Kong have become tied to a crisis atmosphere regarding Taiwan. Moreover, any leaders who might wish to pursue a more generous

approach to Hong Kong are exquisitely vulnerable to the charge that they are insufficiently attentive to the security of the nation. In China as in our own country, there is no more serious charge.

Such overwrought charges have been magnified during a transitional period of divided leadership in 2003-2004, as they have been during own election. With the retirement of all the top leaders of the pre-2003 era transitional stresses should decline. In addition, Beijing leaders are exhibiting more willingness to talk with leaders of the democracy movement. In the past they have largely limited senior Chinese consultations to Hong Kong groups that have strong business interests to oppose democratization, but now they are broadening their contacts and possibly their vision. That is a good start. But the prosperity and stability they seek will eventually require substantial steps toward the democratization that is enshrined as the ultimate goal in the Basic Law, a document that Chinese leaders wrote themselves.

The key strategic considerations for the democracy movement are two. First, democratization will never happen unless the central government is comfortable with it. (The Basic Law shows that in principle they can get comfortable with it.) Second, in an executive-led government, the key to giving the people some influence over policy is to give them traction over the choice of Chief Executive. Short of direct universal suffrage election of the Chief Executive, which China banned for 2007-8, there is an infinitely divisible range of possibilities from the present near-zero traction up to broad popular election of the Selection Committee, which would then function like the U.S. Electoral College.

The key strategic consideration for China should be straightforward. Because of recent demonstrations, the central government fears instability in Hong Kong. But repression of popular desires for wider suffrage will cause instability whereas satisfying them will ensure stability and continued loyalty. The argument to the contrary is based on what I have called the Three Confusions. The argument that Hong Kong can be stabilized by purely economic means is obsolete. The argument that democratization in Hong Kong will destabilize the rest of China is wrong; ever since Deng Xiaoping invented one country, two systems, there has been broad acknowledgment that the Hong Kong system is different. While the argument that the central government can't make political concessions as a result of demonstrations in Hong Kong without encouraging demonstrations in the mainland has some validity, any capable mainland politician of good will should be able to overcome this by making the case that broader suffrage was encouraged by the Basic Law and negotiated with parties that are emphasizing a policy of reassurance.

U.S. interests and policy

The U.S. has large interests in Hong Kong. Tens of thousands of Americans live there, and tens of billions of dollars of American money are invested there. We enjoy the ability of our Navy to visit Hong Kong. But economic and strategic interests are mostly not at stake in the debate over Hong Kong democracy. When Americans and American

businesses leave Hong Kong, they predominantly move to Shanghai, which is less democratic. Militarily the Hong Kong port calls are a convenience, not a necessity, and anyway they are not at stake unless we have a larger confrontation.

For the purpose of this hearing, therefore, the American interests at stake are our fellow feeling for the Hong Kong people, our sympathy for the democratic movement, and our hope that China under its new leaders can become as comfortable with democracy in Hong Kong as they have become with the rule of law in Hong Kong.

U.S. policy has a frustrating dilemma. Americans love democracy and would like to support it in Hong Kong, but we have limited positive leverage and great negative leverage. Stating our views emphatically and reasoning with Chinese officials can help; most are in fact open to dialogue. Ultimately, no matter what we do, there is no assurance that China's central government will move in the direction we prefer. The best we can do is to argue our case and to avoid actions that would impair chances for a broader suffrage.

There have been proposals to express our concern over China's recent hard line by removing Hong Kong's status as a separate customs territory or removing its exemption from export controls. Changing Hong Kong's separate trade status would cause grievous harm to precisely those Hong Kong people they purport to help. Removing its exemption from export controls would destroy the ability of banks, including our own banks based there, to upgrade their computers; that would destroy Hong Kong as Asia's and America's regional banking center and cause grievous harm to the people we wish to help. Turning to political strategy, confrontational policies would defeat the moderate strategy of the democratic forces in Hong Kong and the desire of Hong Kong people for a strategy of moderation as clearly expressed in this month's balloting. Nothing serves China's hardliners better than an ability to portray the Hong Kong problem as a confrontation with the United States rather than a negotiation with some of their own people. Times may change, but for now the American posture most supportive of Hong Kong's democratic forces combines a clear voice with avoidance of confrontation.

Put another way: We Americans have every right to press China to show some respect for the clear mandate the Hong Kong people gave for a policy of democratization and moderation. When we make that case, we incur our own obligation to show respect for the second part of the mandate as well as the first.

There are also clear implications of this analysis for the roles of U.S. government-related NGOs. Teaching all political parties in Hong Kong how to organize and raise funds from the electorate provides an unexceptionable service. The parties advocating democratization benefit disproportionately from such a service, because they don't have Chinese enterprises funding their events, but the service itself does not discriminate between the DAB and the Democratic Party, and, equally important, it does not favor one democrat over another. On the other hand, with anti-democratic conservatives basing their influence on an argument that democratization in Hong Kong equates to instability, a policy of systematic American favoritism toward one particularly anti-Chinese figure,

and awarding him a statue that associates Hong Kong's democracy movement with Tiananmen Square 1989, seriously damages the prospects of democratization. The ancient rule of the medical profession is valid here: When you seek to help a patient, first do no harm.