

[Hong Kong on the brink of Tian'anmen: Making the human right to peaceful protest reality and opening the Gate to Democracy](#)

Par:

[Thamil Venthana Ananthavinayagan](#)

Langue Undefined

Le:

1 Décembre 2014

Protest beyond the law is not a departure from democracy; it is absolutely essential to it.

— Howard Zinn

Introduction

Something is rotten in the state of China: the people don't accept to be oppressed; they don't accept that Beijing treats them as objects rather than subjects.

What do the protestors want? They expect the Chinese government to revise its decision to assess all candidates prior to the first direct election of a chief executive scheduled for 2017 ([for more information](#)). Beijing wants to ensure that only "patriotic" candidates will run for election ([for more information](#)). The [Basic Law](#) prescribes that the chief executive of Hong Kong will be elected by universal suffrage and at the same time, it stipulates that the nomination of candidates is subject to a nominating committee.

However, Hong Kong Chinese see that their chances to vote a candidate are diminished and they must arrange with a chief executive of China's grace- observers consider this a repudiating manoeuvre from the promised "universal suffrage" ([for more information](#)). The big companies in China have arranged themselves with Beijing ([for more information](#)), but students (especially), fearing about the future, want to retain and extend their freedoms. They want what they were promised: free elections, not undermining them ([for more information](#)).

The peaceful protest

The peaceful protestor is a prime maker of history, using protest as natural continuation of politics ([for more information](#)).

A peaceful protest gives the people the ability to manifest its dissent with the government's policy. The protest is also an outlet for the outrage of the people once elections are not in sight or are inadequate to communicate with policy-makers. Peaceful protests can remedy defects^[1] in any political system ([for more information](#)). They can also provide a means of challenging corrupt hierarchies of power in less democratic contexts.^[2] But they are also an indicator of a vibrant and open-minded society. The young community in Hong Kong wants to avoid political alienation, seek for self-realization and find a fulcrum for political leverage^[3]; this young community attempts to play its proper role in a developing society.

In Hong Kong, especially the young populate the streets these days. They want to take their future in their hands; they are not willing to accept the imposition of the status quo of Chinese political life also in Hong Kong. They do not want to accept bad governance, nepotism and authoritarian rule. The young rebel and speak up; they challenge the authority like the Tank Man once did. The young spirited minds are too young to recall the rule of the British Crown, too young to recall the Tian'anmen massacre- is that of an advantage? Probably yes, probably no. On the one hand they are more audacious, on the other hand too naive- in any case, they are willing to stand up for their rights.

James Wilson outlined some requirements for a successful protest: the protestor has to be confident in what he or she wants to say and he or she wants to share this with the wider society. The movement must be dynamic enough to educate new positions, moving to in a general direction truthful to the society. Finally, the protest object must be clear and must not use inappropriate methods.^[4]

Umbrella revolution with smartphones

The protestors on the street used umbrellas to shield themselves from the pepper spray used by the enforcement authorities. The protest is already called the umbrella revolution ([for more information](#)). The Chinese authorities fear the power of the street and the new technologies, as they turn off the available mobile network and obstruct the communication channels among the protestors. Nevertheless, protestors found other ways of communication to organize their gatherings: *FireChat* is an app used also in Iraq to plan events and gatherings. It has to be asserted that the rhythm of protests has been accelerated by this kind of technology^[5] and has transformed the way protests are conducted ([for more information](#)). Globalization and modern technology now enable social movements to transcend borders as rapidly as can ideas. Information technology and social media in particular are particularly significant in the context of peaceful protests.

China, the right to peaceful protest and the International Convention on Civil and Political Rights (ICCPR)

As a matter of human rights law, the “human right of peaceful protest” is a construct, an amalgam of different rights, including, the right to freedom of peacefully assembly (Art. 21 ICCPR), the right to freedom of association (Art. 22 ICCPR), the right to freedom of expression (Art. 19 ICCPR) and the right to participate to the conduct of political affairs (Art. 25 ICCPR). The Special Rapporteur on the rights to freedom of peaceful assembly and of association asserted:

The rights to freedom of peaceful assembly and of association serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. The rights are essential components of democracy as they empower men and women to express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable. Such interdependence and interrelatedness with other rights make them a valuable indicator of a State’s respect for the enjoyment of many other human rights.”^[6]

China shall facilitate the possibility of peaceful protest, meanwhile we witness the old allegation that the protests are foreign-funded, that the international community and especially the western countries shall not interfere in internal affairs. Certain commentators assert that Hong Kong Chinese are in an identity crisis and in disenfranchisement ([for more information](#)). These commentators indicate that the future of the Hong Kong Chinese is, with these elections, inevitably intertwined with mainland China.

The violation of one human right is felt all over the world. While China has signed, but not ratified the ICCPR, it is not legally bound. However, there is a pull to compliance as Thomas Franck^[7] describes. Legitimacy on the international plane derives from the level of compliance.

However, Thomas Hobbes once famously wrote that covenants without swords are but words ([for more information](#)). To say that human rights are legally binding doesn’t mean that there is an authority entrusted with power to hold sovereign countries accountable and legally responsible. But, as Ignatieff states correctly: “The fundamental moral commitment entailed by rights is not to respect, and certainly not to worship. It is to deliberation.”^[8] It is a mutually respectful way of coming closer to a reasoned agreement about human rights.

The human rights revolution came a long way, but it is far from being complete. It can continue in Hong Kong.

Conclusion

China can seize the moment and undergo catharsis and purify itself by genuinely embracing the concern of the protestors, listen to them and reply to the call. It is not that one can expect that Beijing is going to comprehensively revise universal suffrage; but it might concede in a limited manner- this already would be a major victory for those displaced and disenfranchised.

□□□ / □□□□ or: *one country, two systems* is the constitutional principle once formulated by Deng Xiaoping. Hong Kong was always a liberal piece in the construct of the People’s Republic, allowed to enjoy benefits and fundamental freedoms ([for more information](#)).

However, it must be China’s utmost priority to reconcile with its citizens, comply with human rights standards

and achieve a dialogue for a vibrant, open and transparent society. It is also the chance to remedy defects in the system. The protestors of Hong Kong have the momentum: making Hong Kong the gateway to democracy and achieving a higher human rights standard in entire China.

Looking at the pictures from Hong Kong I recall the famous words of the great Martin Luther King Jr. In his last speech before his all too sudden death: “(...) *Somewhere I read of the freedom of assembly. Somewhere I read of the freedom of speech. Somewhere I read of the freedom of press. Somewhere I read that the greatness (...) is the right to protest for rights. (...)*”

Ce billet ne lie que le(s) personne(s) l’ayant écrit. Il ne peut entraîner la responsabilité de la Clinique de droit international pénal et humanitaire, de la Faculté de droit, de l’Université Laval et de leur personnel respectif, ni des personnes qui l’ont révisé et édité. Il ne s’agit pas d’avis ou de conseil juridiques.

[1] Harrop A. Freeman, The Right of Protest and Civil Disobedience, Indiana Law Journal, Vol. 41: Issue 2, Article 3, p. 228.

[2] Neil Jarman and Michael Hamilton, Protecting Peaceful Protest: The OSCE/ ODIHR and Freedom of Peaceful Assembly (2009), Journal of Human Rights Practice Vol. 1: Number 2, p.208.

[3] *Supra* note 1, p. 228.

[4] Harrop Freeman, The Right of Protest and Civil Disobedience, India Law Journal, Vol. 41:2, 1966, p. 253-254.

[5] Christopher J. Anderson and Silvia M. Mendes, Learning to Lose: Election Outcomes, Democratic Experience and Political Protest Potential, in: British Journal of Political Science, Vol. 36, No. 1, p. 97.

[6] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, para.12.

[7] Thomas Franck, Legitimacy in the International System, in: American Journal of International Law, p. 708, Vol. 82, 1988.

[8] Michael Ignatieff, Human rights as politics and idolatry, p.72-73, Michael Igantieff et.al. (eds.), 2003, 3rd edition, Princeton University Press.

Sujet:

[Hong Kong](#)

[Droit international des droits de la personne](#)

[Pacte international relatif aux droits civils et politiques](#)