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OCCUPYING HONG KONG

Kin-man Chan

- *How deliberation, referendum and civil disobedience played out in the Umbrella Movement.*

ABSTRACT

The Umbrella Movement was one of the key mass protests of 2014 – and one of the largest ever seen in Hong Kong, with a simple message: universal suffrage. In this article, the author provides a unique insider look at the challenges faced by Occupy Central with Love and Peace (OCLP). The organisation innovatively held a civil referendum, allowing Hong Kong citizens to choose the electoral reforms they wanted to put to Beijing. After the government refused the demands, OCLP facilitated the occupation of large parts of the city, together with other civil society organisations. The insightful reflections offer an honest examination of the different groups involved in the occupation, on what could have been done differently, and provide lessons for future civil society mobilisations.

KEYWORDS

Hong Kong | Civil society | China | Occupy Central with Love and Peace | Umbrella Movement | Protest Democracy

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The Umbrella Movement in Hong Kong, which lasted from September 28 to December 15, 2014, was triggered by a student strike in late September 2014 objecting to Beijing's decision to impose restrictions on the election of the Chief Executive (CE)¹ of Hong Kong. However, preparations for the demonstration had been in the works since March 2013, when Occupy Central with Love and Peace (OCLP) announced its plan to occupy a main road in the city's most important commercial district if the government refused to implement universal suffrage in the 2017 CE election, as promised by Beijing in 2007. In order to exert pressure on Beijing in the electoral reform process, what followed was a series of public deliberations, an unofficial but widely popular referendum, episodes of civil disobedience and what became one of the largest mass protest movements Hong Kong has ever seen. This paper discusses how so-called "deliberation days" and a civil referendum were used to deal with a split within the opposition and the need to develop a more coherent pan-democratic camp after the eventual occupation.

Split between moderate and radical democrats

Before OCLP was jointly launched by Prof. Benny Tai, Rev. Yiu-ming Chu and the author of this paper, the opposition forces in Hong Kong were seriously split due to the controversy over the reform of the 2012 Legislative Council (Legco)² election. Moderate democrats, such as the Democratic Party, were fiercely attacked by radicals for cutting a deal with Beijing to expand the franchise for some of Legco's functional seats (primarily those with a very limited

franchise such as members of business and professional associations) rather than eliminating the seats entirely. Unlike their radical counterparts, such as the League of Social Democrats, the moderates accepted the timeline set by Beijing for the implementation of universal suffrage in the 2017 CE election and 2020 Legco election. Any meaningful improvement within the existing constitutional framework could only be considered before these dates. The moderate Democratic Party (DP), the largest opposition party in Hong Kong, had held secret negotiations with Beijing, after which the DP's reform proposal for expanding the franchise was accepted. Although a survey suggested that the proposal enjoyed support from 60 per cent of the community,³ radicals saw it as a betrayal of democratic values because it appeared to justify the existence of functional seats. The negotiating process was also criticized as lacking in transparency and accountability. The DP subsequently suffered a blow in the 2012 Legco election, and the split among democrats reduced people's trust in the opposition parties. Civil society organisations became more hesitant than ever to work with them.

In view of these circumstances, the founders of OCLP believed that it was of the utmost importance to build a new platform for the opposition parties and civil society organisations to work together to tackle the most important constitutional reform in Hong Kong's history. OCLP argued that negotiation with the authorities should not be demonized as long as a mandate from the public was sought. Deliberation and a civil referendum would be the procedures adopted to resolve conflicts among the opposition parties and to solicit consent from the community.

D-Days: from consensus building to split

As moderate and radical democrats held differing views concerning the CE election process, particularly regarding the role of "civil nomination" of candidates, OCLP relied on a civil referendum to select a reform proposal for the movement. Deeply influenced by the German philosopher Jürgen Habermas's theory of the public sphere⁴ and deliberative democracy, plus the concept of a "deliberation day" advocated by the US scholars Bruce Ackerman and James S. Fishkin,⁵ the OCLP founders initiated a series of deliberation days (D-Days) to allow citizens to discuss matters related to constitutional reform in a rational manner before casting their vote in a referendum. The subjects discussed included the relevance of democracy, OCLP strategies, and a specific reform proposal.

The first D-Day was held on June 9, 2013, when 700 people gathered at the University of Hong Kong (HKU) to participate in this historic assembly. Most participants were members of the opposition parties and civil society organisations. Before attending D-Day, they could go to a website to view articles expressing divergent views concerning OCLP's demand for an election method that met international standards of universal suffrage. For instance, other than one-person-one-vote, there should be no unreasonable restrictions blocking people from different political backgrounds from standing for election. This discussion of what constitutes "genuine universal suffrage" was pertinent because the Basic Law (the mini constitution of the Hong Kong Special Administrative Region) stipulates the establishment of a "nominating committee" to screen candidates for CE elections. OCLP argued that unless the constitution of the nominating committee was truly broadly representative or the threshold for nomination was sufficiently low, the committee would become an obstacle to free elections.

D-Day 1 began with an open session allowing participants to express their views. It was then followed by a breakout session in which randomly formed groups of a dozen or more participants, led by a moderator responsible for maintaining fair discussion procedures, discussed the various issues concerned. All group members, regardless of position, were given equal time to express their views. The results of the breakout session were then reported during a closing session.

The first D-Day was deemed successful not just because of the satisfactory turn-out but also because moderate and radical democrats discussed political issues in a rational manner. One of the suggestions made during D-Day 1 was to bridge the idea of democracy with the concerns of different sectors of civil society. Therefore, D-Day 2 was organized from October 2013 to January 2014 as a series of discussions by different community groups, such as university students, social workers, women, labourers, church members and the chronically ill. People often feel more relaxed in expressing their views in such "subaltern counterpublics,"⁶ reflected by the increase in the number of participants to 3000.

D-Day 3 was held in five different locations simultaneously on May 6, 2014. More than 2500 citizens deliberated on the 15 reform proposals selected by a group of international experts invited by the HKU School of Law. At the end of the day, participants selected three proposals to be considered by the public in the upcoming civil referendum. The selection process was controversial, with some of the radical opposition parties mobilizing D-Day participants to select only those proposals with a provision for “public nomination,” i.e., those specifying that a certain number of registered voters could nominate candidates. Moderate democrats criticised this provision as a violation of the Basic Law and a measure that would be difficult for Beijing to accept. They also complained that the OCLP movement had been hijacked by radicals and that the selection process on D-Day 3 was exactly the kind of political screening that people opposed. The democracy movement was split yet again.

Securing a consensus through a referendum

The moderates, particularly Hongkong 2020 led by former senior government official Mrs. Anson Chan, were dissatisfied with the poll results. Mrs. Chan criticised the upcoming civil referendum, stating that it could not offer people a genuine choice if proposals without a provision for public nomination were excluded. Students and radicals counter-attacked, accusing her of being out of touch with the masses. When the movement was on the verge of collapse, Cardinal Joseph Zen played a critical role in rebuilding solidarity. He urged both sides to stop attacking the other while OCLP worked on a remedial solution. Finally, OCLP added an additional motion to the referendum to encourage those who did not support public nomination to take part: “The Legislative Council should veto any proposed election method violating international standards of universal suffrage that fails to provide voters genuine choice.”

Consensus then started to be built. The three OCLP founders pledged to step down from leadership of the movement if they failed to draw 100,000 votes in the referendum. Cardinal Zen, together with OCLP and other political groups, immediately organised a Democracy March to take place for seven consecutive days and nights to promote the referendum across Hong Kong. The march was successful in conveying a strong image of solidarity, with Mrs. Chan and other leaders of the democratic camp urging people to vote in the referendum while marching through various communities. The Chinese central government issued a white paper on the implementation of “One Country, Two Systems” immediately before the Democracy March, proclaiming China’s “overall jurisdiction” over Hong Kong. In Chinese, the term was written as “overall administrative power,” and was understood as a move undermining the high degree of autonomy that Hong Kong enjoys. Furthermore, since the white paper also referred to judges in Hong Kong as “administrators,” a number of lawyers joined a “silent march” to express their worries over the continued independence of the judiciary.

The referendum is described as “civil” because it was purely a civil society initiative without official status. OCLP commissioned the HKU Public Opinion Programme to administer the referendum. All Hong Kong citizens aged 18 or above were eligible to vote via an electronic platform or at one of the polling stations set up in various communities. The Hong Kong government accused the referendum of “having no constitutional status,” even though OCLP had never made such a claim.

Before the civil referendum was held from June 20-22, 2014, the electronic voting system suffered unprecedented attacks by hackers. The scale of these attacks was so large that local network security maintenance companies decided to withdraw from the project, claiming that they lacked the capacity to handle such large-scale attacks. At the same time, however, the attacks sparked an overwhelming reaction from the community, since it was widely believed that the hackers had been hired by the Beijing authorities to deprive the Hong Kong people of their right to free expression. Fortunately, US-based CloudFlare was determined to defend the voting system. Working day and night, the CloudFlare team finally managed to fix the system. In the first few minutes after the referendum started, thousands of citizens scrambled to vote. Hearing this exciting news, many people burst into tears while they were finishing the last leg of the Democracy March. On June 22, citizens who did not use the internet lined up in front of the polling stations set up in community churches and social service centres.

In the end, around 800,000 of Hong Kong's 7 million population voted in the civil referendum. The proposal of a "three-track system" (nomination from the public, political parties, and the nominating committee), made by the Alliance for True Democracy, received the most votes. Some 88 per cent of voters also agreed that Legco should veto any government proposal that did not meet international standards of universal suffrage. The massive turnout for the referendum brought the movement to a satisfying climax, as people felt that they had overcome tremendous obstacles to make their voices heard.

Beijing's backlash

Armed with the mandate granted by the referendum, OCLP immediately contacted the Hong Kong government, hoping that a meeting could be held to kick-start the negotiation process. The government's response was lukewarm at best, whereas the people of Hong Kong were more eager than ever to express their demand for democracy. Around 500,000 people joined the annual July 1 rally organized by the Civil Human Rights Front to demand genuine universal suffrage. Despite OCLP's objections, more than 500 college students and other citizens stayed behind after the rally to "trial-run" Occupy Central by sitting down on a main road in Central district of Hong Kong. It constituted a sign of young protestors' impatience with OCLP's plan to treat occupation as a last resort. They argued that only by occupying the city as soon as possible would sufficient pressure be placed on Beijing when it considered the reform proposal.

The government then released a consultation report on constitutional reform⁷ depicting the demand for public nomination as a view held by "some people" and pro-government views as "mainstream." When representatives of the Hong Kong government finally met with the three OCLP founders on July 29, they condemned the Occupy Movement as a violation of the law and reiterated that Beijing would not yield to threats of this kind. On August 31, 2014, the Standing Committee of the National People's Congress in Beijing made a decision (known as the "831 decision") that basically ruled out the implementation of free elections in Hong Kong. The decision laid down three significant hurdles to democracy: the constitution of the nominating committee would be modelled on the existing election committee, i.e., comprise 1200 representatives from four sectors of society; support from 50 per cent of nominating committee members would be required for a candidate to qualify for election; and the number of candidates would be restricted to two to three persons. As Beijing has been able to control the results of past CE elections, its stipulation that the CE nomination system be modelled on the existing election committee naturally led to the conclusion that the proposed election would be a restricted one.

Umbrella Movement, civil disobedience and resistance

After Beijing announced the 831 decision, effectively blocking democracy, OCLP hinted that the Occupy Movement would start on October 1, China's National Day. We expected thousands of protestors to block a major road in Central, among them lawmakers, prestigious barristers, religious leaders, and scholars. Deeply affected by the tradition of civil disobedience embraced by Henry D. Thoreau, Mahatma Gandhi, Martin Luther King and John Rawls, we were committed to the principle of non-violence and preservation of the rule of law in the course of fighting for justice. OCLP then announced a set of rules for protestors to follow, such as not to insult the police or become involved in any physical confrontation with police officers or counter-protestors. Should they be arrested, protestors were advised not to resist but to lie down and let the police carry them away. To a limited extent, civil disobedience does break the law but it was thought that protestors should shoulder the related legal responsibilities. OCLP repeatedly explained to the public that the aim of civil disobedience was not to challenge the rule of law but to strengthen it by establishing a more responsive government and legislature.

Many young people, however, adopted a more proactive mode of civil disobedience. At the end of the student strike in late September, led by Joshua Wong of Scholarism and Alex Chow and Lester Shum of the Federation of Students (FS), more than 100 students jumped into the forbidden Civic Square, where fences had been erected to prevent people from holding political assemblies in front of government headquarters in Admiralty. Shortly after

this direct action was taken, around 50,000 people gathered outside the square in support of the students. In the early morning of September 28, the three founders of OCLP together with representatives of FS announced that Occupy Central would begin immediately in the area around government headquarters. All of the pickets and other resources prepared for the original October 1 Occupy Movement were deployed to Admiralty.

Some student activists disagreed with FS's decision to allow OCLP to "take over" the leadership, and many protestors left immediately. Witnessing these negative reactions, the OCLP founders agreed to step back and serve only as assistants to the student protestors. A few hours later, tens of thousands of people from all over Hong Kong flocked to Admiralty to show support for the protest. When police blocked their way to government headquarters, furious supporters blocked a boulevard and spontaneously started the occupy action. The police used pepper spray to disperse the crowd, which refused to leave, prompting protestors to try to protect themselves with umbrellas (the umbrella subsequently became a symbol of non-violent protest). Just before 6pm, when OCLP and student leaders were about to hold a press conference, riot police fired tear gas shells into the crowd. Although the attack led to a moment of panic, not a single protestor fought back or retaliated. Shortly afterwards, protestors gathered again in Admiralty. Others occupied traffic junctions in two other commercial districts of Hong Kong: Mong Kok and Causeway Bay. The protestors' courage in fighting for democracy and their firm belief in non-violence captured the imagination of many Hong Kong people.

Immediately after the occupation was launched, internal conflicts emerged among the protestors. Students and other young protestors regarded OCLP's original plan as too passive and weak. They preferred civil disobedience with a more active, if not offensive, character, building barricades and blocking police deployment. When confronting the police, they raised their hands as a gesture of non-violence. Another group of more radical protestors, however, regarded the Umbrella Movement, as it was now called, as a resistance movement that should not be restricted by the idea of civil disobedience or its principle of non-violence. These radicals attacked the leadership formed by FS, Scholarism, and OCLP and promoted a decentralized movement structure. Their motto was "You don't represent me." They called on their supporters to destroy OCLP pickets and even the stage from which movement leaders made speeches, as the former represented rules and discipline, and the latter symbolised a leadership alienated from the masses.

A lack of rigid rules gave protestors a greater sense of autonomy. It opened up a space in which they could construct a movement of their own. All protestors were treated equally in terms of control over barricades and setting up forums, and the sharing of food, medicine, and skills was very common. The protestors established and managed a recycling system, and numerous art creations appeared across the Occupy sites. Lacking tight leadership, however, the movement also lost direction, particularly after the student leaders finished their debate with top government officials. Student leaders performed remarkably in the debate and won tremendous respect from the community. OCLP, however, suggested that either the dialogue with the government be continued or protestors should consider retreating as the message had already been stated, loud and clear. Student leaders refused both suggestions and continued the occupation regardless of a later court injunction. The standoff between the protestors and the government was the result of Beijing's objection to further escalating repressive force by the police while the student leaders were torn between OCLP and the more radical protestors. As the occupation inevitably caused disturbances to people's daily lives, including traffic jams, the government decided to adopt a wait-and-see strategy rather than make any substantial concessions.

The movement was the largest in Hong Kong's history but it also prompted a severe backlash from the community. Surveys found that the community was seriously split, with each side having more than 30 per cent support.⁸ The majority of young people supported the movement, whereas most of their parents opposed it. When Occupy moved toward the two-month mark, even many democracy supporters came to believe that the occupation should end at some point. Probably under pressure from more radical protestors, the student leaders decided to storm government headquarters on November 30. That action led to a number of casualties as police responded with batons. On December 3, the OCLP founders openly expressed their disapproval of the protestors' action and urged all protestors to retreat from the occupation. Together with more than 60 protestors, the OCLP founders turned themselves in to the police to show their determination to shoulder their legal responsibilities and further explain their cause during an

eventual trial. The government finally cleared the occupation in Admiralty on December 11 and in the Causeway Bay site on December 15. In the eyes of the protestors, the occupation was over but the movement continued. “We will be back” was found written on the ground of the Admiralty site after the protestors had retreated.

China’s reform and the future of Hong Kong human rights

The Hong Kong government submitted a reform proposal to Legco for approval on 17 June 2015. The proposal was made according to a rigid framework laid down by Beijing. Although it would have offered the opportunity for Hong Kong voters to directly elect their own leaders, those on the ballot would have been vetted by a pro-Beijing Committee in advance. The proposal was therefore vetoed by democratic legislators as expected.⁹ Even without democracy, Hong Kong can still operate because it is a very institutionalised society. We have an efficient civil service working according to rules and regulations and an independent judiciary protecting basic human rights. That said, the government will find it difficult to implement any substantial reforms or controversial policies, as the present system does not provide it with sufficient legitimacy. When many deep-rooted problems such as housing and monopolies are not duly addressed, more social conflict will arise.

There are also signs that the authorities will step up their control over the ideological arena. In the wake of the occupation, a number of scholars and officials in Beijing concluded that the younger generation had been negatively influenced by liberal intellectuals in Hong Kong. Pro-Beijing newspapers in Hong Kong then attacked HKU for playing too prominent a role in the Occupy Movement. Numerous scholars including the author of this paper have been accused of spreading harmful ideas. They also criticised HKU for considering the promotion of Prof. Johannes Chan, former Dean of HKU Law School and longstanding supporter of democracy, to pro-Vice Chancellor of the university. At the secondary school level, pressure has been exerted on Liberal Studies, a subject designed to nurture students’ critical-thinking abilities. Finally, a number of Hong Kong’s largest bookstore chains, including Commercial Press, have refused to stock books supportive of the movement.

A more imminent threat is the enactment of a national security law (Article 23). Many pro-Beijing politicians resurrected the issue in the wake of the protests, reflecting their view that the Umbrella Movement was an act of subversion or even treason that only a national security law could prevent from happening again. Some even suggested the direct application of China’s national security laws in Hong Kong. As the government has already secured enough votes in Legco to support the passage of Article 23, Hong Kong people can only rely on civil society to stop it from happening. To face this challenge, civil society organisations must learn the lesson from the Occupy Movement by overcoming its internal split and building a more coherent leadership together with the opposition parties.

China is now the world’s second superpower, and relies less on Hong Kong than it did in the past. It is confident enough to say NO to Hong Kong but not confident enough to afford it democracy. China’s paramount leader, Xi Jinping, is still in the process of consolidating his power. Giving Hong Kong democracy would contradict his current approach to managing the country. However, as China has yet to find a sustainable model of development, and the effectiveness of Xi’s top-down approach to control corruption is questionable, the Chinese Communist Party will have to find more institutionalised means of tackling its pressing social problems. Otherwise it will not be able to prevent the factional conflicts within the party and societal conflicts in different regions accumulating to the point of the “crackup,” recently predicted by Shambaugh.¹⁰ Once China recognizes the importance of transparency, accountability, public participation, procedural justice, and good governance, Hong Kong may have a better chance of attaining democracy. In order to make this possible, the pan-democrats need to build a more coherent opposition and stronger leadership within the community. Their role is particularly crucial when the rivalry among different wings of the student movement has brought Federation of Students to the brink of disintegration. Regardless of these challenges, however, there is the sign that the fight for democracy in Hong Kong will continue. In a recent survey jointly conducted by three universities in Hong Kong regarding the political reform made by the government, it was found that around 47 per cent of people supported the proposal while 38 per cent opposed it. Furthermore, among respondents aged 18 to 29, some 63 per cent were against the proposal and amongst university degree

holders, 55 per cent opposed it. The young and educated have been enlightened and refuse to accept a restricted universal suffrage. 11 In light of this, even though the Umbrella Movement did not make an immediate change to the system, it has successfully sowed the seeds of democracy among the next generation.

NOTES

1. The Chief Executive is the head of the Hong Kong Special Administrative Region.
2. The Legislative Council is the law-making body in Hong Kong with half of the seats directly elected by people from different regional constituencies and the other half elected by functional constituencies such as chambers of commerce, professional associations and trade unions.
3. Hong Kong Institute of Asia-Pacific Studies, *Public opinion survey on constitutional development: Press release 1* (Hong Kong: The Chinese University of Hong Kong, 2012), accessed May, 2015, http://www.cuhk.edu.hk/hkiaps/tellab/pdf/telepress/10/Press_Release_20100615.pdf. Chinese only.
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