

Hong Kong's Civil Society in an Age of Renewed Sino-American Rivalry

Jeffrey Ngo and Nathan Law

When President George H. W. Bush signed the U.S.-Hong Kong Policy Act into law on October 5, 1992, he made a commitment to recognize the British colony as a free-standing polity beyond the transfer of its sovereignty to China, which was then less than a half-decade away.¹ His idea was to honor its renowned economic freedom by ensuring that, as a separate customs territory, it would not be affected by future sanctions against Beijing. For years thereafter, this legislation has contributed much to Hong Kong's continued prosperity, confidence, and close ties with the United States. Yet there is a catch: it authorizes the sitting president to terminate the special arrangement with an executive order whenever he determines that Hong Kong is no longer distinct from China. The scenario, once only hypothetical, is increasingly becoming the new reality.

Since the Umbrella Movement — a series of massive pro-democracy protests that occupied the city's major thoroughways for three months in the fall of 2014 — the U.S. Congress has thrice introduced the bipartisan Hong Kong Human Rights and Democracy Act as a countermeasure. The bill is known for proposed mechanisms that target individuals who have undermined Hong Kong's autonomy, such as freezing their U.S.-based assets and denying them entry. Other provisions include a mandate for the Secretary of State to issue an annual report on the political situation in Hong Kong, and an assurance that Hong Kongers who have participated in nonviolent assembly would not be denied American visas on the basis of their arrest.² Likewise, Washington lawmakers on both sides of the aisle have been eager to voice their unease about developments in Hong Kong through issuing statements, holding hearings, and convening meetings with key opposition figures.

Pessimists may well argue that the United States no longer has leverage over Hong Kong, as officials in Beijing can simply ignore Washington pestering over what they deem an “internal affair.” This essay, however, suggests that events over the past year have indicated

¹ S. 1731 (102nd), United States-Hong Kong Policy Act of 1992, <https://www.govtrack.us/congress/bills/102/s1731>.

² Joshua Wong and Jeffrey Ngo, “Stand Up for Democracy in Hong Kong,” *New York Times*, May 3, 2017, <https://www.nytimes.com/2017/05/03/opinion/stand-up-for-democracy-in-hong-kong.html>.

otherwise. At a time of escalating Sino-American rivalry, the extent to which the Hong Kong government cracks down on its civil society is closely tied with U.S. foreign policy on China. Congress does have a crucial role to play if it wishes to reaffirm its longtime commitment to safeguarding the territory's rapidly waning autonomy.

Last July, local authorities were directed by Beijing to dissolve the small, secessionist National Party citing an obsolete colonial-era ordinance.³ Its founder, Andy Chan, then accepted an invitation to speak at the prestigious Foreign Correspondents' Club (FCC) about Hong Kong nationalism. The Chinese Foreign Ministry intervened and pressured the organization to cancel the event; acting president Victor Mallet refused on the grounds that all voices were welcomed.⁴ Over the next two weeks, Leung Chun-Ying, Hong Kong's unpopular former leader, blasted the FCC for "not draw[ing] any line against criminals and terrorists." He went so far as to compare Chan with Holocaust and Nanjing Massacre deniers.⁵

But to the surprise of many Hong Kongers, Chief Executive Carrie Lam merely called the controversy "regrettable and inappropriate."⁶ She even contradicted Leung, her immediate predecessor, on several occasions. While he alleged that the FCC was paying the city "a token rent" for the historic, prime-location building it occupied, she refuted this by revealing that it had been paying the market rate since 1982; where he contended that the talk was a violation of a notorious national security law known as Article 23, which failed to pass 15 years earlier amid widespread local and international resistance, she acknowledged the FCC's right to decide what and who to host. Indeed, President Xi Jinping's unshakable hard line on separatism seemed at odds with the Lam administration's relative restraint. Eager to downplay the whole incident, Bernard Chan, who convenes the Executive Council, lamented that the anti-FCC backlash would just give the independence movement unnecessary momentum. Elsewhere, Commerce Secretary Edward Yau continued to tirelessly underscore Hong Kong's autonomy both in public and private.

³ "Hong Kong May Ban Political Party That Seeks Independence From China," *New York Times*, July 17, 2018, <https://www.nytimes.com/2018/07/17/world/asia/hong-kong-ban-independence-party.html/>; "Hong Kong Moves to Impose Unprecedented Ban on Separatist Party," *Guardian*, July 17, 2018, <https://www.theguardian.com/world/2018/jul/17/hong-kong-moves-to-ban-citys-first-pro-independence-party/>.

⁴ "Independence Talk Tests Limits of Free Speech in Hong Kong," *Wall Street Journal*, August 6, 2018, <https://www.wsj.com/articles/independence-talk-tests-limits-of-free-speech-in-hong-kong-1533557488>.

⁵ "Ex-Leader CY Leung Equates Independence Activist's Talk with Nazism, Racism and Holocaust Denial," *Hong Kong Free Press*, August 13, 2018, <https://www.hongkongfp.com/2018/08/13/ex-leader-cy-leung-equates-independence-activists-talk-nazism-racism-holocaust-denial/>.

⁶ "Regrettable and Inappropriate,' Hong Kong Leader Carrie Lam Says of Foreign Correspondents' Club Talk by Separatist Leader Andy Chan," *South China Morning Post*, August 5, 2018, <https://www.scmp.com/news/hong-kong/politics/article/2158356/regrettable-and-inappropriate-hong-kong-leader-carrie-lam>.

What may have caused this curious rift between Beijing and its puppet regime, unprecedented since Britain turned Hong Kong over to Chinese hands on July 1, 1997? The answer lies in the Sino-American trade war.

This may seem strange to many observers, as everything up to the summer of 2018 worked out exactly as Bush had intended. Hong Kong was barely wounded by the huge tariffs slapped onto China by the United States. In fact, it enjoyed various price slumps, most notably American-grown fresh produce, which at one point was 30 percent cheaper thanks to Chinese tariffs on American goods creating excess supply.⁷ The U.S., likewise, benefited from not dragging Hong Kong into the dispute; after all, the territory was an avid consumer of American goods that ranked ninth on the list of top U.S. trade partners by total exports, higher than Brazil or France.⁸ However, as Deng Xiaoping famously told his British counterpart Margaret Thatcher during their negotiations over Hong Kong back in the 1980s, Beijing would never hesitate to defend its notion of “territorial integrity” even at the risk of grave costs. The Hong Kong government, meanwhile, was most concerned with keeping the local corporate establishment content in exchange for stability, which translated into an underlying worry that too much political repression could lead to economic repercussions.

With this discrepancy in mind, Chan of the National Party ignored fierce Chinese opposition and delivered his sold-out speech with a scorched-earth approach.⁹ In a letter to the White House dated August 18, he urged President Donald Trump to “suspend the differential treatments between Hong Kong and China” and “push forward” the revocation of their W.T.O. memberships.¹⁰ The Commerce and Economic Development Bureau swiftly hit back, condemning efforts to sabotage Hong Kong’s standing.¹¹ No “sensible, reasonable person,” Lam added, would condone this position.¹²

Chief Executive Lam formally outlawed Chan’s party in late September, prompting criticism from Secretary of State Mike Pompeo, who, as a former member of Congress from Kansas, had co-sponsored an earlier version of the Hong Kong Human Rights and Democracy Act in 2015. “The U.S. supports the freedoms of expression, peaceful assembly, and association,” he declared in a statement. “These are core values we share

⁷ “Trade War is Good News for Hong Kong’s Fruit Lovers as Tariffs Drive Down Cost of American Cherries,” *South China Morning Post*, August 3, 2018, <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/2158190/trade-war-good-news-hong-kongs-fruit-lovers-tariffs>.

⁸ “Top U.S. Trade Partners,” U.S. Department of Commerce, https://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_003364.pdf.

⁹ “‘China Is an Empire’: Hong Kong Independence Talk Held Amid Protests,” CNN, August 14, 2018, <https://www.cnn.com/2018/08/14/asia/hong-kong-independence-intl/index.html>.

¹⁰ Chan Ho-Tin to Donald J. Trump, Twitter, August 18, 2018, <https://twitter.com/hknationalparty/status/1030680774884843526>.

¹¹ “Commerce Dept. Slams Pro-Independence Party’s Call for Trump to Axe US Special Treatment of Hong Kong,” *Hong Kong Free Press*, August 19, 2018, <https://www.hongkongfp.com/2018/08/19/commerce-dept-slams-pro-independence-partys-call-trump-axe-us-special-treatment-hong-kong/>.

¹² “Lam Lost for Words over Chan’s Letter to Trump,” *Standard*, August 22, 2018, <http://www.the-standard.com.hk/section-news.php?id=199334>.

with Hong Kong, and that must be vigorously protected.”¹³ In October, further pressure from Beijing led to the absurd deportation of Mallet, then the *Financial Times* Asia news editor. Following this, even the American Chamber of Commerce joined Hong Kongers to speak out in displeasure despite its usual silence on their democratic rights, citing “free speech” and the “free flow of information” as bedrocks of the territory’s success.¹⁴

Anxieties over whether Washington would alter its Hong Kong policy reached new heights on November 14, when the U.S.-China Economic and Security Review Commission on Capitol Hill published its 2018 annual report. “Beijing’s encroachment on Hong Kong’s political system, rule of law, and freedom of expression is moving the territory closer to becoming more like any other Chinese city, a trend that serves as a cautionary example for Taiwan and the Indo-Pacific region,” it noted. “President Xi’s maneuver to end presidential term limits alarmed the territory’s pro-democracy advocates due to the steady erosion of Hong Kong’s autonomy under his watch.” It recommended Congress to send official delegations to Hong Kong and to meet with Hong Kong “pro-democracy legislators, civil society, and business representatives” when they visit the United States. Most importantly, it suggested a reassessment of American export control policy by the Department of Commerce and other relevant government agencies. The report focused on dual-use technology, a category of commodities that comprises computers as well as other electrical machinery and equipment. This together constitutes a sizable share of U.S.-Hong Kong trade.¹⁵

The pro-establishment camp in Hong Kong broadly interpreted this as a sign that the trade war was now spreading into the territory. In a dramatic reversal, Felix Chung, leader of the pro-business Liberal Party, abandoned a non-binding motion to reintroduce Article 23, the controversial pro-Beijing national security ordinance, amid mounting fears of retaliation from the international community.¹⁶ The episode mirrored the party’s similar last-minute reversal in 2003, when its eight crucial swing votes managed to block Beijing’s first attempt to pass the same law. This unusual move was largely made in reaction to the business community’s concerns over damage to Hong Kong’s reputation.

¹³ “US Secretary of State ‘Concerned’ By Hong Kong’s Ban on Separatist Party,” *Hong Kong Free Press*, September 26, 2018, <https://www.hongkongfp.com/2018/09/26/us-secretary-state-concerned-hong-kongs-ban-separatist-party/>.

¹⁴ American Chamber of Commerce in Hong Kong, “AmCham Statement Regarding the Non-Renewal of FT Editor Victor Mallet’s Visa,” October 8, 2018, <https://www.amcham.org.hk/news/amcham-statement-regarding-the-non-renewal-of-ft-editor-victor-mallets-visa>. See also Joshua Wong and Jeffrey Ngo, “Why the World Should Be Alarmed at Hong Kong’s Expulsion of a Foreign Journalist,” *Time*, October 16, 2018, <http://time.com/5425653/victor-mallet-hong-kong-china-ft-media-freedom-fcc/>.

¹⁵ U.S.-China Economic and Security Review Commission, *2018 Report to Congress*, 16–17, 383, https://www.uscc.gov/sites/default/files/annual_reports/2018%20Annual%20Report%20to%20Congress.pdf.

¹⁶ “Why the Liberal Party Decided to Withdraw Article 23 Motion,” *E.J. Insight*, November 21, 2018, <http://www.ejinsight.com/20181121-why-the-liberal-party-decided-to-withdraw-article-23-motion/>.

But Trump and Xi called a 90-day truce on December 1 after they convened in Buenos Aires for the G-20 summit.¹⁷ As that deadline neared, the American president subsequently extended it to allow further talks between negotiators representing the two countries.¹⁸ The detente in effect alleviated the perceived immediate economic peril to Hong Kong, quelled local apprehensiveness, and thus allowed Beijing to resume its crackdown on the territory. In the first two months of 2019 alone, the Lam administration put forward the National Anthem Ordinance that would criminalize individuals who disrespected “March of the Volunteers,” as well as troubling extradition arrangements that would allow local authorities to send anyone deemed to have violated Chinese law for trial in mainland China, Hong Kong citizens or otherwise. Both, if passed, would have huge detrimental implications for Hong Kong’s civil society.

Since at least the elder Bush years, the prevailing wisdom in Washington had been that engaging with Beijing best served U.S. interests and that of Hong Kong. In the wake of the Tiananmen Massacre in June 1989, the president opted for a soft response for fear of thrusting China back to the more dangerous Maoist period. His successors followed more or less the same path. Notwithstanding human rights concerns, Bill Clinton championed China’s entry into the W.T.O. and George W. Bush granted it permanent normal trade status. Even when Barack Obama tried to counterbalance China’s regional clout with his signature “Pivot to Asia,” he was careful not to do anything that could be remotely misconstrued as subverting the Communist Party’s “One China” principle. He excluded Taiwan from the now-defunct Trans-Pacific Partnership Agreement and showed only timid support at best for the Umbrella Movement. “Our primary message,” he remarked on November 10, 2014, during his trip to Beijing, “has been to make sure that violence is avoided as the people of Hong Kong try to sort through what the next phase is of their relationship to the mainland.”¹⁹

However, as of May 2019, the trade war has recommenced after Chinese officials failed to reach a deal with the Trump administration. No matter how things turn out in the end, Sino-American relations will have been altered for good. The old bipartisan consensus of tolerance and assistance, based on the assumption that a bigger role for China to play on the world stage would oblige it to respect international law, has given way to the new bipartisan understanding that China is an enormous threat. A recent *Foreign Affairs* article co-authored by Kurt Campbell, the former Assistant Secretary of State for East Asian and Pacific Affairs in the Obama administration, argued that American foreign policy had gotten China wrong for too long: “Diplomatic and commercial engagement have not brought political and economic progress. Neither U.S. military power nor regional balancing has stopped Beijing from seeking to displace core components of the U.S.-led system. And the liberal international order has failed to lure or bind China

¹⁷ “U.S. and China Call Truce in Trade War,” *New York Times*, December 1, 2018, <https://www.nytimes.com/2018/12/01/world/trump-xi-g20-merkel.html>.

¹⁸ “Trump Delays a Tariff Deadline, Citing Progress in China Trade Talks,” *New York Times*, February 24, 2019, <https://www.nytimes.com/2019/02/24/us/politics/us-china-trade-truce.html/>.

¹⁹ “Obama Speaks Out, Carefully, on Hong Kong,” *Politico*, November 10, 2014, <https://www.politico.com/story/2014/11/obama-china-hong-kong-112743>.

as powerfully as expected. China has instead pursued its own course, belying a range of American expectations in the process.”²⁰

The present U.S.-Hong Kong Policy Act of 1992 is inadequate in the face of previously unforeseen challenges. This legislation was, as its principal sponsor Senator Mitch McConnell admitted more than a quarter-century ago, never designed to tackle contentious issues and “pick a fight with China.”²¹ The result is a statute that provides two untenable options for the White House today: (a) curtail a mutually-beneficial trade relationship with Hong Kong when the state of its politics worsens, or, (b) as Lam hopes, pretend everything is still fine and do nothing. In other words, the only substantial way for Washington to respond to Hong Kong's downfall is to cease viewing it and China as separate polities, but which in turn risks further sidelining the territory from the international community. There is no other way for Washington to deter Beijing's encroachments on Hong Kong at the outset, and this is precisely where the deficiency lies.

Trump's biggest frustration with Chinese leaders — with all their currency manipulation, unfair trade practices, and theft of intellectual property — is that they do not “play by the rules.” On this, he is not wrong, but Congress would do well to remind him not to neglect patterns that extend far and wide. One needs to look no further than Hong Kong, where, since the Umbrella Movement ended without attaining genuine universal suffrage, lawmakers have been disqualified, activists have been imprisoned, and foreign journalists have been vilified if not deported. Washington, however, still holds tremendous sway over how events play out in the territory, especially when it is able to drive a wedge between pro-Beijing hardliners and the local business community. The Hong Kong Human Rights and Democracy Act, not unlike temporary and selective embargoes, hence offers a new path forward. It would compel Lam to do more than pretend Hong Kong's autonomy has not deteriorated, defend U.S. foreign-policy interests, and send an unmistakable signal to China and the world that despite Trump's isolationist, “America First” rhetoric, Washington is still devoted to upholding universal values.

Jeffrey Ngo is a Ph.D. candidate in History at Georgetown University, with a specialization in Global Asia. He also serves as chief researcher for Demosistō, the Hong Kong-based youth political group that advocates for self-determination. In 2017–18, he was a visiting scholar at the University of Toronto.

Nathan Law, the founding chairman of Demosistō, became the youngest-ever member of Hong Kong's Legislative Council when he was elected in 2016 at the age of 23. He is a former political prisoner and core student leader of the Umbrella Movement. He will begin his M.A. in East Asian Studies at Yale University in Fall 2019.

²⁰ Kurt M. Campbell and Ely Ratner, “The China Reckoning: How Beijing Defied American Expectations,” *Foreign Affairs* 97, no. 2 (March/April 2018): 61.

²¹ “U.S. Senator Defends Hong Kong Act,” U.P.I., April 22, 1992, <https://www.upi.com/Archives/1992/04/22/US-senator-defends-Hong-Kong-act/7158703915200/>.