



One Country, Two Systems: An Inch from Victory

by William Overholt

Commentators around the world are reading the big July 1 demonstration in Hong Kong over security legislation and its aftermath as a victory for human rights and as one more signpost along the road of Hong Kong's deterioration. They are right about the first, but hopefully dead wrong about the second.

For the uninitiated, Hong Kong's Basic Law contains Article 23, which requires the Hong Kong government to enact laws "to prohibit any act of treason, secession, sedition, subversion against the Central People's Government . . ."

The Hong Kong government finally proposed their laws in July 2003 and proposed very stringent versions. In particular, they would have allowed an Assistant Police Commissioner (rather than the courts) to authorize searches of private homes, would have allowed the government to proscribe organizations proscribed on the mainland (potentially including Falun Gong or even the Roman Catholic Church), would have allowed the Secretary for Security rather than the courts to set the rules for appealing such decisions, and would not have allowed a public interest defense against a conviction for publishing state secrets. (On the mainland, almost anything can be a state secret.)

Some of the proposed legislation was milder than British-era legislation, but the public did not trust the Tung government to implement the laws in the same spirit. The combination of excessively stringent laws, distrust of those who would implement the laws, and government distortion of the results of a required public consultation exercise led to a demonstration by 500,000 people, one of the largest in Hong Kong history, on July 1, and to a subsequent crisis of the government there.

Here are a few thoughts of an old expat.

To friends who despair: Article 23 issues are important. It is appropriate that people are excited about them. But while you worry about your rights and demonstrate for them, it is useful to keep some perspective. In any arrangement like "one country, two systems," there are important boundary issues that cannot be resolved in the short space of a constitutional document like the Basic Law. The U.S. Supreme Court has spent two centuries trying to resolve boundary issues between,

for instance, the First and Second Amendments to the Constitution.

Most big boundary issues have been resolved with minimum confrontation. The capitalist economic system is intact without significant skirmishes. The court system is intact following a couple of border skirmishes that were minor in scale but crucial in substance - one over the Chinese government's initial commitment on the structure of the Court of Final Appeal, the other over the scope of the initial finding on immigration. Both worked out satisfactorily, if not perfectly. The free press is intact. The right to demonstrate is far better than in pre-1990 British days, as demonstrated on July 1 and a thousand other occasions. The immigration issue was messy but has been resolved in a manageable way.

Article 23 has become the big border skirmish. Resolve this one satisfactorily for Hong Kong people and the basic boundaries of the two systems have been delineated. Victory is within grasp for both Hong Kong and the mainland.

To my friends who fear Article 23: It is right to fight so that homes cannot be invaded without a court order. It is right to insist on a law that cannot be used, in principle or in any way, ever, against a peaceful organization operating in Hong Kong and not using its Hong Kong organization to undermine the central government. It is right not to depend on the goodwill of future officials in implementing the laws. The rule of law means depending on the law, not on the individuals implementing it.

At the same time, if you believe in the rule of law then there must be legal expression of "one country, two systems." The most basic rule of the system is, you can't subvert me and I can't subvert you. Hong Kong is the big winner from this basic rule. There is no way that Hong Kong can allow active undermining of the Chinese government without it responding, and anyone with a map can see who will win. There must be Article 23 legislation with enough teeth so that Hong Kong can halt any substantial activity that would undermine the basic rule of mutual non-subversion. Anybody who denies that, however noble the principles cited as excuses, is selling out Hong Kong's autonomy and freedom.

But for "one country, two systems" to be viable, decisions must come from Hong Kong, not the mainland. They must be limited and subject to judicial review. The point is to do it in a

way that secures Hong Kong's freedom, not in a way that abandons key freedoms.

To my friends in Beijing: Your response to July 1 so far has been wise and restrained and the whole world has noticed. Don't get too nervous. Everything that has happened since July 1, 1997, shows that Hong Kong people do not want to cause trouble for the mainland. Polls consistently showed that Hong Kong people admired Zhu Rongji more than any local leaders. Those Hong Kong politicians who ran on obsessively anti-China platforms have lost support. Pre-1997 fears of Hong Kong subverting the mainland have proved false.

Positive, even patriotic, feelings for the mainland in Hong Kong have been remarkably high. The demonstrations are not directed at the national leadership - they are defensive, not offensive. People feel they are defending their fundamental rights, and their anger is more focused on local than national leaders.

If you support them rather than hinder them, you will consolidate their comfort with "one country, two systems." If you make them feel suppressed, you will create wealthy, well-educated, well-organized enemies for generations. Please understand this moment as an opportunity to consolidate a success, not a threat to Chinese stability.

After the Article 23 crisis is resolved, you need to tackle the problem of Hong Kong's economic stagnation and its connection to political structure. Without reforms ranging from education to competition policy, Hong Kong's economy will weaken and political discontent will grow. It is falling behind Shanghai in such areas. Reforms stagnate because the chief executive, the legislature, and the civil service block each other.

There are theoretically two ways to resolve this. First, one can revert to a more dictatorial system like the old British governorship. Second, one can allow more open political organization so that leaders gain a broad, organized, popular mandate to implement reforms, as in South Korea. Reverting to the British system will cause upheaval. Trying to remain the same, and blaming problems on the personalities of Chief Executive Tung Chee-hwa or the opposition, will ensure continued stagnation and discontent.

It is time to start moving forward, carefully, with protection for national interests, but forward nevertheless. If you use the Article 23 debate to ally with the Hong Kong people, they will trust you and you can trust them.

To my democratic friends: This is a time for showing how strongly you feel about basic rights, such as the sanctity of the

home. It is a time for resolving the Article 23 issue on terms that a democratic spirit can live with for decades to come. It is not, however, the time to press for drastic changes in the way Hong Kong is governed. To resolve Article 23, you must fight on particular issues with all appropriate passion, but you must not create fear on the mainland that a revolutionary movement might seize control of Hong Kong. The Chinese government gets paranoid about that quite easily, and tragedy could ensue. Doing one important thing at a time, using your head as well as your heart, is no betrayal of principle.

Assuming that Article 23 is satisfactorily resolved, it is essential for the democracy movement to take this (hopefully) auspicious occasion to distance the democracy movement from gratuitous anti-mainland rhetoric. We have come a long way from one prominent democracy leader's pre-1997 insistence that after July 1, 1997, Chinese soldiers would be arresting people on the streets of Hong Kong and that he personally was likely to be killed or jailed. We need to move farther away; there will be no democracy without some degree of comfort in Beijing. It is possible to be passionate about particular issues, to be furious at particular situations and to be principled at all times, while always avoiding exaggeration and always phrasing issues in the most constructive way.

So far, the Chinese government's response to the crisis has been favorable to your side. Express appreciation. If it mishandles the situation, there will be plenty of time for retribution, but this is a chance to show the leadership that they must take you seriously, and that they benefit from taking you seriously.

To my business community friends: On issues like Article 23 you need to be conspicuously part of the solution, not part of the problem. Business community leaders have admirably defused the immediate crisis, but vital lessons must be learned from earlier complacency. Hong Kong has problems that cannot be solved through the unquestioning acceptance of old ways and easy accession to whims from the north. Some of the business leadership was at risk of being seen as part of the problem with Article 23, which risked hellish future confrontations. In my experience, mainland leaders do not mind being counseled to change policy, as long as the message clearly has constructive intent.

Business leaders often argue that Hong Kong is not ready for democracy, because the citizenry doesn't understand business. But, equally, business leaders often fail to understand the depth of feeling in the community. Moreover, much of the opposition to sound business policy is a direct result of non-business politicians feeling excluded from real influence and therefore having no stake in doing anything other than articulating the demands, however excessive, of their constituents. Give them a real stake, and the best will position themselves as responsible managers in the hope of getting the big jobs.

Beyond that, the business leadership has failed to press Hong Kong forward into the reforms needed to keep Hong Kong competitive. From education reform to competition policy reform, the business community needs the organized support of the broader community, and it needs to acknowledge that sometimes its support of narrow interests is making Hong Kong fall behind Shanghai. These weaknesses precisely mirror the weaknesses of the opposition. The business community is married to the rest of the community, but somewhat estranged; this is a good time to seduce and a bad time to scratch old wounds.

July 1, 1997, remains a historic victory for human decency, political restraint, and diplomatic compromise. We must never forget that the alternative was some local version of the Indian army's march into Goa or the Indonesian army's march into East Timor. Given the ideological distances and distrust of the early 1980s, the wisdom and restraint of Britain and the mainland were amazing. Today the task is much easier, but we of the current generation have yet to show whether we are equally mature as we move beyond that early compromise.

It is not surprising that implementing "one country, two systems" involves important ambiguities, powerful clashes of interest, and powerful emotions. The key to the future is whether both sides recognize that they are an inch from victory in delineating the basic boundary of the system, and therefore conduct themselves with confidence and restraint and focus on vital issues. Both sides can passionately support their vital interests and win, because ultimately their vital interests do not conflict. If, on the other hand, either side reacts with unfocused emotion, then it risks snatching defeat from the jaws of victory.

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