

PRESENTATION: HONG KONG

HONOURABLE MARGARET NG NGOI-YEE,

HONG KONG

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Introduction by John Joseph Clancey

We may wonder today about the institutions that have helped free Hong Kong from political violence. Let me say a few words about Hong Kong's Legco ("Legislative Council"). Many would not consider Hong Kong a full democracy. Half of the seats are functional constituencies. Margaret is a barrister elected for four terms by the legal sector to be a representative in the Legco. Before that, she was a journalist. Margaret's speeches are not overwhelming. You have to listen to the building argument. Her newsletters every month come with a recipe. Her arguments and articles are well-crafted, a subtle combination of ideas and arguments. The reasons and argument falls in place convincingly. Let's listen today to what Margaret has to say about the phenomenon of torture and political persecution and the role of the judiciary in combating this practice.

Margaret Ng Ngoi-yee

Thank you very much, good afternoon everybody. My talk is simple, it is this.

1. Compared to other parts of Asia, Hong Kong is relatively free from politically motivated torture
2. Freedom from politically-motivated torture does not imply that Hong Kong is a paradise of liberty. Rather, institutions exist to protect human rights
3. The threat is always there, and close at hand. If we do not keep vigilant, institutions may crumble and the day will not be far off when Hong Kong will see very unsavoury violence

Let me begin with a story. Last month, 10 June, on a day as hot as this, 25000 Hong Kongers marched in the streets chanting "Lee Guangyao!" Now Lee Guangyao is a journalist-activist jailed the past 21 years for his involvement in the Tiananmen Square incident. He was kept in solitary confinement, handcuffed with cuffs far too small for him and thereby disabled, blinded and his teeth were knocked out because he tried to go on hunger strike. Upon release at the beginning of the year, a reporter from Hong Kong went to interview him and asked him if he regretted taking such a hard path. He said, "I'd rather they chop off my head, then to repine".

A few days after this interview was broadcast, he was found dead in a hospital room, standing before the window with a cord around his neck (he was reported as having hung himself). His family came just in time to see the position the body was in before authorities rushed the corpse off to perform an "autopsy" and to cremate his body. Lee's sister, who had been caring for him, mysteriously disappeared.

Hong Kongers refused to accept this account. "He has not committed suicide! He has been 'suicided'! We want to know the truth". Elderly citizens and students blind-

folded themselves and walked to the sound of a beating of a drum. "We want to experience what it is to not see, to identify with this man."

The international press asked them, "How did this man inspire you?" This man inspired many because of the people's inner sense of the grave injustice committed against this man, a man who was so strong in his conviction that he was prepared to put down his life for freedom and democracy in China. I would argue also that this man was so inspiring because, increasingly in their hearts, Hong Kongers see the shadow of oppression, force, violence and invasions into their freedom.

In 1997, the British colony of Hong Kong was handed over to China on the basis of a joint declaration. China laid down points of fundamental policy for Hong Kong. This was later worked into a Basic Law. The Hong Kong people's freedom and independent system was guaranteed. At the same time, Article 23 in the Basic Law required Hong Kong to enact laws to prohibit acts of sedition, theft, secession, "wrong" political association, etc. In 2003, government under Tung Chee-wah tried to implement by Article 23 "national security" legislation – this move got Hong Kongers very worried. Famous marches and protests by over half a million pressured Tung's administration into reconsidering the legislation. The people felt their civil and political freedoms had been threatened. Eventually, the Bill was withdrawn. The Article 23 legislation was stayed because Hong Kongers clearly expressed non-acceptance. In 2005, the Chief Executive who tried to introduce this Bill stepped down. Is it good news for HK? Not necessarily. But this demonstrated our sense of justice and fear that our own freedom would be curtailed.

I said that by comparison, we have fewer atrocities in HK than in the mainland (for instance when we marched for Lee Guangyao). Protestors were asked, why march for Lee Guangyao and not the thousands of others also under similar political persecution? Lee Guangyao was a representative man. He represented the rest, the numerous we didn't or still don't know about.

Hong Kong is not a bed of roses. We have constant fears about "confessions" extracted under police custody, intimidation (fear of domestic and police violence). There were many women arrested on suspicion of being prostitutes, strip-searched although there was no need or justification. Many people who were engaged in peaceful demonstrations were also detained and humiliated with strip-searches. Increasingly, we are witnessing greater police control at public demonstrations. The use of (larger) pepper spray during demonstrations is increasingly approved. While the government claims police are exercising self-restraint, such proclamations provoke questions of what police do when not exercising self-restraint.

On 17 March 2009, a police constable shot 31-year-old Hong Kong-born Nepali Bahadur Limbu dead on a hillside slope. The assumption was that the man was South Asian because he was dark complexioned. The man who was killed was mentally disturbed, but the claim was that the police officer shot him in self-defence. The Hong Kong community rejected the official explanation. The inquest into the shooting took 76 days, and the wife of the deceased was represented by lawyers and also cross-examined, along with other witnesses. She was given legal aid because she could not afford it herself. Although the eventual verdict by the jury was that the police officer was not to be blamed, this case proceeded to civil court.

The law demands that any circumstance surrounding death not completely straightforward, including deaths in official custody, should be properly investigated by the Coroner. Yet the Limbu case did not come about merely because of laws or codes but due to pressure from the media, civil society, individual Legco members and the general public.

Let me share another incident with you. The Vice-Premier of China, Li Keqiang, came to celebrate Hong Kong University's Centenary. Security tightened all over campus. The free press was interfered with and students were prohibited from protesting. A man wearing June 4th logo shirt was forcibly taken away by police although he lived in a nearby estate. Reporters who attempted to take photographs had their cameras covered roughly and pushed aside. Lousy explanations were given at the Legco to explain away the lack of media freedom ("The policeman thought he was about to be hit and raised his hand. It got caught in the camera"). The University subsequently set up its own independent inquiry to investigate complaints of political persuasion and compromised independence. By statute, an independent Police Complaint Council was established to review and draw conclusions from internal police complaint mechanisms. They then formed their own conclusions.

These stories I attempt to tell you disclose but a mild situation compared to the rest of Asia. But I want to highlight that behind the scenes there is still the fear of authorities using violence. What has checked the complete degeneration of our civil liberties is the people's belief and memory of laws since recent colonial times, wherein rule of law and political freedom are crucial components back in the "metropole", the United Kingdom. Such national experiences have generated certain expectations, values and beliefs that will only fade as living memory dies.

What institutions and political norms currently exist in Hong Kong?

1. The Coroner's Ordinance (reviewed shortly before 1997) established the need for most deaths to be investigated. It awarded pathologists and the Coroner the power to investigate and open public inquests wherein concerned parties were legally represented. These inquests were then decided upon by a jury.

2. An independent judiciary determined the different "weight" and "admissibility" of confessions. The burden of proof rested on the prosecution to show that the confession was voluntarily given. This clause used to be under "Judges' Rules".

- a. Wire Tapping Law – the Hong Kong government used to carry out illegal wiretapping and there were litigations against it. Court ruled against government's illegal and unconstitutional acts and declared that if the government continued that would be unlawful (outside Basic Law). So this legislation had to be passed.

- b. Government that still considers rule of law important and requires it of the people. It therefore needs to live by these same laws itself. One day this may no longer be the case.

3. The independence of legal profession

4. The independence of a still relatively free press

- a. Stories such as Lee Guangyao's would not otherwise see the light of day

- b. Hong Kong Journalists' Association has the ability to compel police to admit to fabrications in official press releases or publications, for instance

5. Half of Hong Kong's Legco geographically elected

a. This is not ideal. There is also the issue of there not being truly universal suffrage. There are 30 seats contested under "geographical constituencies".

b. The other half of the Legco are "functional constituencies" (another 30 seats)

6. Strong, flourishing civil society and Non-Government Organisations (NGOs)

7. Strong emphasis on human rights, equality in opportunity, public complaint making mechanisms

8. The presence and participation of many different actors from civil society in Legco meetings concerning legislation. This is essential to the democratic process.

We must simply watch over these institutions and ensure they do not become watered down. They must not "occupy" the political spaces already conquered. We must provide moral and practical support for victims of the political process. The independence of our judiciary is also essential – but everyone must act fearlessly against the overwhelming power of the state. Preventing politically motivated violence (including torture) is possible through democratic expression of dissent – we have observed this in many places. The public must therefore be careful to avoid resorting themselves to violent protest, thereby legitimising or necessitating even more forceful measures by a threatened regime.

The Legco finally passed an Amendment to immigration law to include a system for torture claimants (subset of refugees). These are provided legal assistance (protecting natural justice) by the state. The Government has had to do this because they lost a number of court cases – judicial review declared actions of the Government unconstitutional. Then again, abuse of this system is possible, here as elsewhere. There is sometimes hostility against those who claim to be victimised elsewhere and wish to settle here, a latent xenophobia or reluctance to assist, provoked either by false reports or by a fear of the saturation of the job market. Genuine torture victims therefore labour under a great and not entirely unreasonable suspicion of the local community. One true of 5000 claims is still a person with full, uncompromised rights to be protected. Hong Kongers are merely concerned about threats to our own freedoms to the extent of caring less for the freedoms and rights of others. This is not something to be proud of.

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