

## Reflections, Questions & Answers

1. Sharif Islam, AHRC: I am from Bangladesh, teaching at University of Dhaka. My question is will you face trouble for giving this speech?

Martin Lee Chu-ming, Hong Kong: The turnout at the next demonstration will be bigger! (laugh) I don't mind. I have a high profile, there will be suitable outcry. I was invited to go to Singapore. There was a small group, reporters and government officials too. "I have strong views about the state of human rights conditions, but of course it must have improved, I'm here!"

2. Fazlul Azim, Bangladesh: Just today, Leung, our barrister speaker from earlier today, presented a much more cheerful situation about the state of corruption in Hong Kong. How do we reconcile what he has said so optimistically with your more bleak evaluation of Hong Kong's present situation?

Martin Lee Chu-ming, Hong Kong: I don't think we can point a finger at any magistrate and say he's corrupt. The condition of human rights in Hong Kong is generally alright; our press is technically free but practices, of course, self-censorship concerning Beijing and its actions. The South China Morning Post editor (I think) is a cadre of the Chinese Communist Party. I read it religiously and still subscribe, but what I find most fascinating is the column that teaches you nifty tricks in the card game Bridge. That column is very independent! (laugh) The establishment of the Independent Commission against Corruption (ICAC) in mid-1970s brought many to justice – we used to have syndicated corruption that worked smoothly. It was a very tight and mutually beneficial nexus, you pay one big check and the vultures will sort it out among themselves. This is unlike China now, where you have to pay everyone individually and it's just too costly to do legitimate business. But I foresaw that if Hong Kong could not export rule of law to China, the mainland Chinese would export lawlessness and corruption here. What's there to prevent them from blackmail, for instance? Let us consider the 25 March 2012 election – shortly before that, Beijing representatives (the "Chinese Liaison Office" head is also the head of all Chinese Communist Party members in Hong Kong) were unhappy with Donald Jiang. They sent someone to the Chief Executive (Jiang)'s office and said look, delay some papers concerning investigation into suspected conflict of interest concerning CY Leung (who was then a candidate). The CLO tried to suppress information and prevent the public embarrassment of CY Leung appearing before Select Committee until after he was elected. Donald Jiang refused them firmly and kicked them out of his office. Before he left, the CLO representative simply said, "I will give it to your boss tomorrow". The next day, Jiang was blackmailed. Nothing prevented/prevents CLO from making such demands on judges too (hey we have a folder somewhere on you).

I still think and hope that judges brought up in common law system will be brave enough to resist that threat. This is not easy. Judges should never be put in that invidious position. But when the government is handled by the Chinese Communist Party, you cannot count on the judges to act courageously and bear the highest cost for such convictions – you can only count on the collective, the people, to resist such. And the election process is yet fraught with manipulation and machinations.

3. Samar, AHRC: There are moments of democratic resistance in our universities and so on. Is there any chance in Hong Kong for such, since the handover? What are those sites of engagement when someone can become inculcated with democratic values?

Martin Lee Chu-ming, Hong Kong: Well in Hong Kong, many have been educated under the British, and many who can afford it send their children to study overseas in UK, Australia, Canada, US...but those left behind have also learned the value of democracy. Strangely, although we never had democracy, we enjoyed the fruits of democracy under the British, because in the metropole it (democracy) was there. If things went wrong in Hong Kong, questions were asked in parliament and administrators would have to respond. And in theory, at least, if people were arbitrarily locked up, that could result in collapse of British government. Although we didn't possess the democratic trio (separation of powers for the executive, legislative and judiciary) physically here, we enjoyed the fruits of democracy – rule of law and a relatively level playing field. We would rely on China for these things, but she doesn't have it. We must therefore grow our own democratic three branches domestically. In 1994, when Chris Patton, last governor, was here, he tried to pass a legislative reform bill that would make Hong Kong democratic. At that time, another party tried to introduce a number of amendments to it that would render it undemocratic. When the Bill was debated on 29 September 1994 (something like that), I remember lobbying for it. John Major tried to lobby legislators in Hong Kong through the employers in London. Beijing also tried to lobby other legislators in Hong Kong by ringing personal mobile phones (laughs). My party strongly supported the Chris Patton reform bill. My principle opponent was from a major Liberal party (liberal in name only). "You are wrong, Martin, if you side with us, we could get a "through train" and those legal professionals could continue to stay another two years. If you vote for the Bill, you could eject us all on 1st July when we are handed over!" I replied, look, a through train is good if it leads up to democracy, but it's a through train to hell.

"If we voted amendments we would get two years of modest democracy at work." I told him once the fire of democracy is ignited, nothing can quench it. This is why Beijing is still worried about giving us genuine democracy because their preferred candidates could not ever return. The difference is that the people of Hong Kong themselves desire democracy; this, even the Chinese Communist Party cannot quench with its humongous political and economic power.

#### 4. Kanyarat Wiphatawat, Thailand: How can we deal with corruption?

Martin Lee Chu-ming, Hong Kong: I've given generic advice that work in most countries that are corrupt. Of course there were jokes about Hong Kong's own ICAC. At the time it was established, some said it was an acronym for "Interference with Chinese Ancient Custom". Another joke that is being passed around is "I cannot Accept Cheques, but I Can Accept Cash". But there was nevertheless a strong push for the establishment of the ICAC anyway. Increased salaries of civil service were implemented to ensure take home pay gave officers a sense of financial security and to reduce the incentive and need to accept bribes. Rather draconian powers were also awarded the ICAC. It was almost too successful – ICAC began prosecuting entire police stations! Some policemen rushed into the ICAC office, where officers were unarmed, and threatened them. Therefore an amnesty was declared by the governor for offences before 1973 unless it was really serious; then it would require a certificate from the government. This was a necessary move by the government – people must be returned to original state (tabula rasa) and given a clean slate. It shows seriousness on the part of the government (political will of those from the top). Declaring a cut-off date for retroactive laws and enforcement of laws and forgiving past crime allows the people to understand the determination of the government. The ICAC (or equivalent in your country) must therefore first have the full confidence of the people in order to succeed. The people

must themselves abhor corruption and cease to see it as an unchangeable, neither good nor evil way of life. Amnesty works hand in hand with retroactive legislation. You must also restore real power to civil servants so they take pride in their work and feel you trust them.

In China, all at the top, whether directly or indirectly, are corrupt and there's a lack of political will.

5. Nandana Manatunga, Sri Lanka: We're economically dependent on China. Chinese policy with regard to human rights is also applied very much in our own countries. There cannot be independent thinking and democracy because we're dependent on China and do not ourselves respect human rights. As you mentioned earlier, Hong Kong is economically dependent. How is it that it has maintained a certain political or social independence?

Martin Lee Chu-ming, Hong Kong: The Chinese market of over 1.3 billion is extremely attractive to the rest of the world. The year 2000 was the last year of Clinton's presidency. He wanted to give WTO membership to China. He wanted to give Permanent Normal Trading Relations (PNTR) to China. This was an extremely dangerous move because it awards carte blanche to China (by removing the likelihood or possibility even of economic sanctions or repercussions). I was happy to help draft proposals. In May 2000, the White House invited me to get proposals through the House of Congress. A week before our scheduled departure, I was called to ask, "Do you mind going over with them to see over 20 members of the House of Representatives who are still undecided?" I agreed again. I was invited for lunch on Capitol Hill. I was introduced to each one. I spoke to Nancy over lunch. "I agree with your reasons ("China's not to be trusted") and if they didn't have the debate every year, the Chinese government would ignore everything and proceed in its evil ways. But how does it help to deny PNTR and membership of WTO? I am going to support your President in the hope they honour all the conditions of membership of WTO and PNTR, so they will have respect for rule of law in commercial contracts to begin with. Hopefully respect for human rights laws will follow." The vote was going to be very close. The President told me his exact prediction. "I want you to know my motives," I said to both the President and Nancy. "I want Chinese to think of rule of law as in line with their best interests so they'll conceive of human rights in a similar fashion. But you must ensure China adheres to rules."

History will have one of two things to say about you, Clinton:

1. He worked hard to give China membership to WTO and PNTR to delay the reign of a tyrant
2. He worked hard to give China membership to WTO and altered the trajectory of Chinese socio-political development, particularly with regards to the observation of human rights.

Everything hinges on one word: compliance.

We went to Yellow Oval, which is the residential part of White House. Twenty-six members of the house and their aides were all standing about having chocolate cake, strawberries... as arranged, I spoke for ten minutes, my colleagues four, and then we took about forty questions. The following day, Shefsky who was doing all the work, said, "You know what happened after you three guys left? I've never seen it before. Complete silence in the room." The next person I saw was Larry Somers. "Why are you pinching my staff, Mr Lee?" A junior staff wanted to help me in HK. "Give me twenty votes", he said. "How can I do that!" He replied, "You already did."

Today, I'm not allowed to go back to China for having said strong words against the government. Today, China is still not respecting human rights. The US government must force compliance, or the first thing will be said of Clinton and the US – the tyrant was just delayed. China signs contracts only because it benefits from them economically, which makes them politically strong. But they make you believe you lose out if you even mention human rights. Imagine this: US President brings huge delegation to China, including reporters, and human rights are almost immediately swept under the carpet in the interests of business talk. "My reporters outside are going to ask if I mentioned human rights. Now that I have, let's get on with business." The US government is getting a dialogue, but what do you do with this chance? Will you exploit it and press hard enough? Is the US government faltering itself in its convictions?