

BOOK REVIEW

## Freedom Undone: The Assault on Liberal Values and Institutions in Hong Kong

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Over the past four years, Hong Kong has been transformed. What had been a mostly open, liberal and rights-respecting system is now a soft authoritarian one. The city's once-vaunted legal system has been weaponized to crack down on dissent. The Hong Kong government and Beijing have used the 2020 National Security Law (NSL) to prosecute activists, journalists, opposition politicians and everyday Hong Kongers seeking to exercise their rights. Thus far at least, the courts have signed off on the government's aggressive use of the law: save for two individuals whose cases are on appeal, judges have delivered guilty verdicts in all the 100-plus cases that have moved through the system.

Four years after the law went into effect, Davis is right to call Hong Kong is a "shadowed version of its former self" (p. 198). Dozens of media outlets have been shuttered, and nearly a hundred civil society organizations have closed. For the first time in post-Handover history, the legislature is devoid of pro-democratic opposition parties. It's now effectively a rubber stamp. Self-censorship is rampant among journalists, public intellectuals and academics. Even cultural institutions have not been spared. Hong Kong's world-class museums, theatres and bookshops have all had to trim their sails, and some have closed down altogether.

Perhaps the best guide to the legal aspects of the crackdown is Michael C. Davis's new book, *Freedom Undone: The Assault on Liberal Values and Institutions in Hong Kong*. Davis, a former professor of constitutional law at Hong Kong University, provides an incisive analysis of the far-reaching changes wrought by the NSL, and he also tells the story of how years of political tightening led to the historic 2019 pro-democracy protests. Davis rightly points out that Beijing is often its own worst enemy: a series of moves by Beijing to tighten control after the 2014 Umbrella movement eroded public trust, and deeply damaged the local government's credibility. In retrospect, by 2019, Hong Kong was a political powder keg. The government's disastrous decision to enact a new extradition law lit the fuse.

Davis's core argument is that the NSL, unilaterally imposed by Beijing, represents a constitutional amendment, changing Hong Kong's liberal order into a national security constitution (p. 15). The Basic Law, Hong Kong's post-1997 constitution, was mostly consistent with the key elements of liberal constitutionalism. Basic rights were constitutionally guaranteed, and the courts were empowered to apply those rights protections to specific cases. The government, though accountable to Beijing, was still meant to govern Hong Kong on its own. Hong Kong was promised a high degree of autonomy, and the Basic Law was meant to guarantee that autonomy.

The Basic Law even promised democratic reforms, although decades of foot-dragging ensured that these promises remained hollow. Davis believes that the NSL crackdown has vindicated the pan-democratic camp's worst fears: in the absence of democratic reforms, Davis argues, Hong Kong remained at the mercy of Beijing and was left largely unprotected from Beijing's whims by local officials who owed their positions to the central government.

But is the Basic Law framework the reason for Hong Kong's demise? Davis argues that Hong Kong's constitutional framework was fundamentally flawed, in that it allowed Beijing entry points into Hong Kong's political system that it later used to reshape the system itself (p. 35). Without doubt, Davis is right that provisions like Article 158, which allowed Beijing to interpret the Basic Law in self-interested ways, undercut Hong Kong's autonomy. That said, Hong Kong's fundamental problem was not legal, but political. After 1997, its future was tied to Beijing. Whatever path the Communist Party chose for China, Hong Kong would almost certainly have to follow.

In other words, the ongoing crackdown owes its genesis not to the Basic Law, but to Xi Jinping's rise to power. It is part of the broader transformation in Chinese politics and governance he has wrought. Davis touches on Xi's role and the directional shift in Chinese politics (pp. 13–14), but he doesn't discuss these elements of the story as much as he might. Simply put, one can't understand post-2019 Hong Kong without understanding the broader context of Xi's approach to running China. Where other prior leaders have been cautious incrementalists, he has been radical, bold and ruthless.

Those same characteristics are on display in Beijing's response to the 2019 protests. The decision to implement the NSL, and to end Hong Kong's autonomy, was almost certainly made by Xi himself. No prior leader would have, or likely even could have, enacted such far-reaching changes, or would have been willing to incur such high costs in terms of the damage to China's international reputation, or Hong Kong's role as a key regional business hub.

Would a stronger constitution or the enactment of long-promised democratic reforms have saved Hong Kong, as Davis suggests? Sadly, I think the answer is no: had Beijing honoured its democratic commitments prior to Xi's tenure, it would doubtless have been more difficult for Xi to enact such far-reaching changes. More pro-democratic elected officials in the LegCo, and perhaps even a directly elected Chief Executive, might have slowed Beijing down. But, given China's fundamental control over Hong Kong, there was no way to stop it.

In tying the reordering of Hong Kong to the flaws of the Basic Law, Davis also understates the virtues of the system prior to 2014. For years after the 1997 Handover, the core elements of Hong Kong's system – including its openness, its bustling and mostly free media, its common law legal system, and its role as a key perch for watching China – were largely preserved. There were real shortcomings, all of which are well documented in *Freedom Undone*. But what's striking about the One Country, Two Systems framework is how well it worked, at least for a while. For years after 1997, the pessimists were proved wrong, as Hong Kongers worked to preserve their home city, even in the face of unrelenting pressure from Beijing.

These quibbles aside, this book is an indispensable guide to the end – at least for now – of a liberal and open Hong Kong. It stands as an invaluable complement to other recent volumes on NSL-era Hong Kong, including Shibani Mahtani and Timothy McLaughlin's *Among the Braves: Hope, Struggle, and Exile in the Battle for Hong Kong and the Future of Global Democracy* (Hachette, 2023), Karen Cheung's *The Impossible City: A Hong Kong Memoir* (Random House, 2022) and Ho-Fung Hung's *City on the Edge: Hong Kong under Chinese Rule* (Cambridge University Press, 2022). *Freedom Undone* paints an essential portrait of the flawed political system whose shortcomings – and whose leaders, all handpicked by Beijing – drove Hong Kongers to take to the streets by the hundreds of thousands, if not the millions, in 2019.

In the closing pages of *Freedom Undone*, Davis calls on Beijing to reverse course (p. 198). As long as Xi remains in office, any such shift by Beijing is unimaginable. For the foreseeable future, national security concerns will remain at the core of Hong Kong governance, and the city will remain a shadow of its former self.