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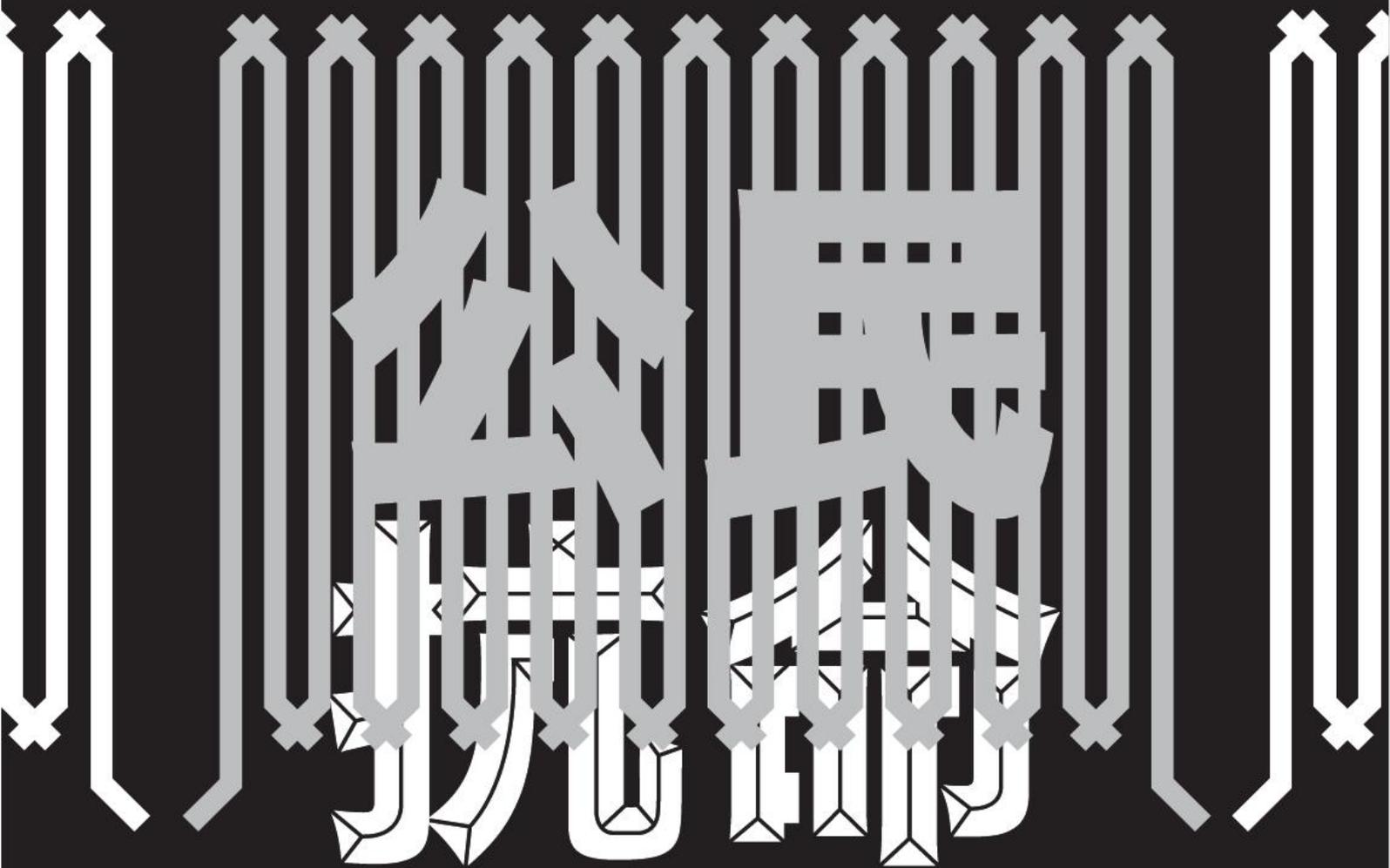
HUMAN RIGHTS

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ISSUE. 11

FALL 2014 / www.amnesty.org.hk

AMNESTY
INTERNATIONAL
國際特赦組織香港分會



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TGIF / www.tgif.com.hk

PHOTO CREDITS

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PUBLISHER

Amnesty International Hong Kong / www.amnesty.org.hk

PUBLISHING DATE

September 2014

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Printed on FSC certified paper.

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WORDS FROM THE EDITOR- IN-CHIEF

The controversy over civil disobedience has been sparking heated debate in Hong Kong society since last year. The focus of the debate is on disagreement about the justifications of the act of civil disobedience. Some believe that unjust government policies or laws should be challenged regardless of the cost, even if the means employed are against the law. Also, the lawbreakers are willing to accept the legal consequences, including arrest, prosecution, trial and criminal liability. Yet, some believe that citizens should never violate the law regardless of any compelling reasons or situations.

The debate involves the protection and restriction of civil rights as well as the spirit of law. Seldom does Hong Kong society have such an intense debate about compliance with laws, we have therefore decided to look for examples from foreign countries, China and Hong Kong, which serve as references in understanding the rule of law concept of “existence of law, observance of law, regulation by law and justice through law” and civil disobedience.

At the same time, I highly recommend our readers to peruse this issue together with Issue 8 “Freedom of Peaceful Assembly”, since the two topics are inextricably linked.

An Mei Po

IN FOCUS

OVERVIEW OF CIVIL DISOBEDIENCE

INTRODUCTION

Jat Sew Tong, SC, Former Independent Police Complaints Council Chairperson opined that civil disobedience had a hundred years history in common law countries and he added that it did not affect the rule of law. He also quoted at the English Court that “civil disobedience is a well-established tradition” and “participants are prepared to bear legal responsibility”.^[1] What is civil disobedience?

PROTEST AGAINST INJUSTICE LAW AND POLICE

Civil disobedience originates from “On the Duty of Civil Disobedience” by Henry David Thoreau. Thoreau rejected paying tax because he opposed war and the slavery system. He was then imprisoned. He argued that “when laws are immoral it is the duty of the honourable man to break the law, accept the punishment and call attention to the injustice at issue”.^[2]

Civil disobedience is “a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government”.^[3] It targets the injustice of law and policy and bears legal responsibility.

Generally, civil disobedience is justified as the last resort when “no alternative course of action is available to an individual or individuals” in order to avoid a greater harm on social justice.^[4] John Rawls stated the justifications for civil disobedience included “serious infringements of the principle of equal liberty”, “normal appeals to the political majority have already been made in good faith and that they have failed” and civil disobedience is used as a last resort and “forming of political alliance by the minorities in order to limit the extent of civil disobedience and without leading to a breakdown in the respect for law and the constitution”.^[5]

To the present day, the concept of civil disobedience is still developing in academic discussion.

UN: NON-VIOLENT RESISTANCE

Article 21(3) of the Universal Declaration of Human Rights stated that “The will of the people shall be the basis of the authority of government”. The United Nations supported non-violent resistance, which “rejected the use of physical violence in order to achieve social or political change”. As “the power of rulers depends on the consent of the population”, people may “seek to undermine such power through withdrawal of the consent and cooperation of the populace” through non-violent action. Examples of non-violent resistance include “protest and persuasion, including marches and vigils”, “non-cooperation” and “non-violent intervention, such as blockades and occupations”.^[6]

CIVIL DISOBEDIENCE DOES NOT UNDERMINE THE RULE OF LAW

Despite civil disobedience violating the law, it is different from committing a crime. Civil disobedience is a conscientious and justified act which publicly violates law and accepts criminal liability while recognizing the legitimacy of the current political and legal systems. The act is done to advocate changes in political structure, unjust law and policy in order to protect justice and human rights.^[7] It meets with “justice through law” which is the top level of the rule of law^[8] and does not violate the rule of law.

THE IMPORTANCE OF CIVIL DISOBEDIENCE

Some people may be concerned that civil disobedience may lead to social chaos. However, John Rawls argued that “if justified civil disobedience seems to threaten civic concord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition.”^[9] He also pointed out that despite civil disobedience being illegal, it was “one of the stabilizing devices of a constitutional system”, “civil disobedience used with due restraint and sound judgment helps to maintain and strengthen just institutions” and “introduces stability into a well-ordered society, or one that was nearly just”.^[10] Yu Ying Shih, a famous Chinese scholar, opined that “civil disobedience does not undermine political, social and economic order. It is a peaceful, rational and civilized campaign to advocate rationalization of order”.^[11]

Civil disobedience is part of political culture of liberal democracy.^[12] Some Common Law Courts recognize the importance of civil disobedience. For instance, the House of Lords stated in its judgment that “civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilized community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in the cases which came before them exemplifies their sensitivity to these conventions.”^[13] The Canadian Court stated in its judgment that “civil disobedience lies at the heart of many democratic changes” and “if acts of civil disobedience do not endanger anyone, or damage property, or significantly restrict essential services and processes within society, and interfere in a minor fashion with the rights of others, the State response must be clear but need not be harsh”.^[14]

Footnote

- [1] Ming Pao. “Jat Sew Tong said civil disobedience might bring changes”. 30 May 2014.
- [2] “Civil disobedience”. *Human Rights Dictionary-International, Mainland China, Hong Kong and Taiwan (Bilingual)*. 2007. Page 57.
- [3] John Rawls. *A Theory of Justice*. Revised edition. 1999. Harvard University Press. Page 320.
- [4] Lawrence Quill. Chapter 1 “What Civil Disobedience is (and is not)”. *Civil Disobedience: (Un) Common Sense in Mass Democracies*. Palgrave Macmillan. April 2009. Page 9.
- [5] *Supra* note [3]. Page 326-328.
- [6] United Nations: International Day of Non-Violence. <http://www.un.org/en/events/nonviolenceday/background.shtml>
- [7] *Supra* note [4]. Page 15.
- [8] Benny Tai. “What level of the rule of law do we need?” *Ming Pao*. 7 April 2005.
- [9] *Supra* note [3]. Page 342.
- [10] *Supra* note [3]. Page 336.
- [11] Yu Ying Shih. “Civil disobedience and the future of Hong Kong”. *Apple Daily*. 1 July 2013.
- [12] *Supra* note [4]. Page 2-4.
- [13] House of Lords. *R v Jones*. [2006] UKHL 16. 29 March 2006. Para 89.
- [14] *R. v. Mayer* [1994] YJ No. 142. From Leo McGrady Q.C., *Protesters’ Guide to the Law of Civil Disobedience in British Columbia. Take Back Our Community Edition*. British Columbia. 23, 24 September 2011. Page 7.

Reference

Brownlee, Kimberley, “Civil Disobedience”, *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), Edward N. Zalta (ed.). <http://plato.stanford.edu/entries/civil-disobedience/>

WHO PERFORMED CIVIL DISOBEDIENCE

INDIA

MOHANDAS KARAMCHAND GANDHI



In order to challenge the British salt monopoly and heavy tax in India, Gandhi led Indians, on the Salt March and produced salt near the sea without paying tax in 1930. He was arrested for violating the salt law. The law was then amended by the British Colonial Government.

Source: Wikimedia Commons, File: Gandhi thinking mood 1931.jpg

AMERICA

MARTIN LUTHER KING JR.

ROSA PARKS



There were series of racial segregation laws in America in the late 19th and early 20th century. For instance, there was racial segregation in public buses with designated seats for white and black passengers within buses in Montgomery, Alabama. Black passengers were required to give up their seats to white passengers when the white seats were filled. Rosa Parks, an African American woman, refused to give her seat to a white passenger when requested by the bus driver in Montgomery in 1955. She was convicted of violating the racial segregation law and fined. This triggered a large scale Civil Rights Movement. For instance, there was a 381-day-Montgomery Bus Boycott led by Martin Luther King Jr, opposing racial

segregation laws. In 1956, the Supreme Court ruled Alabama to repeal racial segregations in public transport. In 1964, the Civil Rights Act 1964 was enacted to prohibit discriminations including race discrimination.

Source: Wikimedia Commons, File: Rosa Parks (detail).tiff
Copyright Credit: ©AI USA

HONG KONG

HONG KONG FEDERATION OF STUDENTS (HKFS)



Since December 1989, HKFS rejected having to apply for a license or Letter of No Objection to hold a public demonstration and assembly in order to oppose Public Order Ordinance through civil disobedience. After 1 July march, HKFS and citizens had an overnight sit-in protest in Chater Road, Central. HKFS aimed at fighting for genuine universal suffrage by civil disobedience. Police cleared the blockade and arrested 551 protesters for unauthorized assembly.

Source: HKFS Facebook

CITIZEN'S RADIO



Citizen's Radio initiated by Bull Tsang Kin Shing broadcast illegally to demand the freedom of public airwaves and law amendment. The activists were prosecuted. In 2009, Judge Douglas Yau of the District Court ruled that the activists were convicted. He "believed the defendants demanded the open up of public airwaves through civil disobedience with noble intentions and the only choice was to fine them."^[1]

Source: Citizens Radio Official Website

Footnote

[1] Ming Pao. "Citizen" Radio needed to pay a fine. It would continue broadcasting tonight". 9 November 2009.

HONG KONG

PROTESTERS OPPOSING EXPRESS RAILWAY LINK



The project of Guangzhou Shenzhen Hong Kong Express Rail Link was controversial because of forced evictions in Tsoi Yuen Village, high construction cost of HKD 69.9 billions, lack of genuine public consultations, undemocratic functional constituencies in Legislative Council (LegCo) and reflection on mode of development. There was a widespread social movement against the Express Rail Link. Protesters occupied roads in Central to surround the LegCo Building when it passed the rail funding on 16 January 2010. None of the protesters were arrested.

Photo credit: Pak Chai

ANTI-BRAINWASHING NATIONAL EDUCATION PROTESTERS



The Civil Alliance Against the National Education including Scholarism occupied a public place of the Central Government Offices for a sit-in protest, hunger strike and assembly with over 10,000 people for 10 days without prior consent of the authority in 2012.

The maximum number of participants of this assembly was 120,000. Eventually the government shelved the Curriculum Guide of the Moral and National Education subject.

Photo credit: Pak Chai

TAIWAN

PROTESTERS OCCUPYING LEGISLATIVE YUAN



Students in Taiwan initiated an anti-Cross-Strait Service Trade Agreement campaign and occupied the Legislative Yuan for 23 days. 4 of the protesters were arrested.

Source: Wikimedia Commons, File: Crowd Outside the Legislative Yuan.jpg

CHINA

STUDENT PROTESTERS AND CITIZENS IN TIANANMEN SQUARE



In 1989, students occupied Tiananmen Square with a sit-in protest, hunger strike and public assembly to oppose corruption and demand democracy, press freedom and freedom of speech etc. The democracy movement was widely supported by citizens in China. However, the authority branded the democracy movement as riots and suppressed it with tanks and gunshots. There has been no independent and impartial investigation till now.

Source: Wikimedia Commons, File: 318-3.jpg

PROTESTERS OPPOSING PX CHEMICAL PLANTS



There have been many large scale protests in China recent years. For instance, people in Maoming, Guangdong protested against the construction of a PX chemical plant and were brutally repressed by police. The authority claimed that this was an illegal protest and blocked the access of information regarding these anti-PX protests.

Source: Web image & The House News. Guangzhou citizens supported anti-PX protests in Maoming

INTERVIEW: CIVIL DISOBEDIENCE JOSEPH CHAN

Q / Amnesty International Hong Kong

A / Joseph Chan (Professor, Department of Politics and Public Administration, The University of Hong Kong)

Q What is the difference between civil disobedience and non-violent resistance?

A Civil disobedience has a long history with different theories. In a narrow sense, civil disobedience assumes that a political regime is acceptable as long as it is not too unjust or corrupt. Only some of its laws or policies are unjust or unfair. These might include serious infringement of human rights, discriminations or violations of procedural justice etc.

Civil disobedience is different from violent revolution. The latter aims at overthrowing a political regime while the former aims at changes of law or policy through non-violent actions. Civil disobedience is also different from lawful protest because civil disobedience breaks the law. However the definition of non-violent resistance is relatively vague as it includes both legal and illegal protests.

Civil disobedience must be justified in public. It must be pointed out that the law or policy protested violates the political values and principles acknowledged by public. A person who is creating civil disobedience should break the law conscientiously with no personal interests or gains.

Civil disobedience is different from conscientious objection. For example, some people may refuse to do military service because killing violates an individual's religious belief. This is conscientious objection. Conscientious objection is based on an individual's religion or conscience while civil disobedience is based on public political principles and values. Conscientious objectors do not necessarily advocate changes of law or policy while civil disobedience aims at arousing public discussion and advocating changes of law or policy through unlawful act.

Q What is the significance of civil disobedience for repressive regimes or a liberal society under the ruling of a repressive regime such as Hong Kong?

A The political system of Hong Kong is semi-democratic. It exercises One Country Two Systems with a high degree of autonomy. It is also a society with the rule of law. We should have an international perspective. We should know that civil disobedience is different from general crime and accept civil disobedience as a special political act within a democratic society.

In Hong Kong, government officials and pro-establishment political figures regard civil disobedience as a general crime. In a news report, for example, Arthur Li, one of the Executive Council members, was reported in saying that Occupy Central was shop theft.^[1] Lai Tung Kwok, Secretary for Security argued Occupy Central was illegal and could not override the rule of law.^[2] In fact, civil disobedience is different from general crime. It does not violate law for personal interests. For those who commit general crime, they generally break the law for personal interests and escape from criminal liability. Conversely, civil disobedience is a public act based on public interest. The objective is to change the unjust law or policy. Because the disobedient individual respects the political regime and the rule of law, he/she is willing to bear criminal liability. However there is no concept of civil disobedience in China. The authorities regard civil disobedience as challenging the political regime. Since Hong Kong is different from China, Hong Kong should not interpret civil disobedience from the perspective of a repressive political regime.

Q The objective of civil disobedience is to advocate changes in unjust law or policy. It still recognizes the legitimacy of the regime. In Hong Kong, some people agree with One Country Two Systems but disagree with one party ruling in China. Is civil disobedience still applicable in this case?

A Let us take Occupy Central as an example of civil disobedience. Occupy Central demands for genuine universal suffrage but it does not aim at altering the whole political system of Hong Kong. And universal suffrage is promised by the authority and is enshrined by the Basic Law. Thus Occupy Central meets the presumption of civil disobedience. Occupy Central aims at political elections in Hong Kong instead of China. As long as there is recognition of One Country Two Systems, civil disobedience is applicable regardless if there is disagreement with one party ruling in China.

Broadly speaking, if the regime is extremely unjust, civil disobedience is more readily accepted by the public. But if the regime is fair and only some of the laws or policies are unjust, a strong justification and willingness to accept criminal liability is needed for civil disobedience to take place.



Thus, civil disobedient individuals must (1) publicly explain the justification of civil disobedience; (2) fight for public interest instead of personal interest; (3) exercise civil disobedience as a last resort as suggested by John Rawls. This means civil disobedience is exercised only after all alternative legal means including protests or lobbying the lawmakers etc have been exhausted. However the statement (4) willing to accept criminal liability, seems rather controversial. It assumes that under a relatively just regime, the disobedient individuals bear criminal liability to show respect to the law or are willing to accept criminal liability because there is a possibility that the justification provided by the disobedient individuals is wrong. The public will be persuaded to support civil disobedience through this way.

The ruling by the judge depends on whether the judge respects civil disobedience and distinguishes it from general crime and is lenient to it or not.

Q Civil disobedience is always regarded as a last resort after all legal means to change the injustice law or policy are exhausted. For constitutional reforms in Hong Kong, are all alternatives used up to justify civil disobedience?

A Many methods including participating in public consultations and protests etc are adopted to fight for genuine universal suffrage in accordance with international human right standards. At this stage, Occupy Central is kind of threat. If genuine universal suffrage complying with international human rights standards is implemented, Occupy Central will not happen. Otherwise if the government's constitutional reform proposal does not comply with international human rights standards on universal suffrage, Occupy Central as civil disobedience movement will be exercised.

Q In what ways and to what extent will the Chinese Central Government and Hong Kong Government suppress Occupy Central? China suppresses Chinese activists by "elimination at the embryonic stage". Is it applicable in Hong Kong?

A It is hard to estimate at this stage. China has used all legal ways to suppress Occupy Central including organizations opposing Occupy Central, public speeches opposing Occupy Central by Bureaux Secretaries and criticizing Occupy Central as illegal farce by official media in China etc. The responses by the Central Government and Hong Kong Government to Occupy Central will depend on the actual situation such as the number of participants and the scale.



Q Why is non-violent action adopted for civil disobedience?

A Non-violent action is more applicable for a nearly just regime because it is hard to convince the public when you do not have sufficient justifications to use violence. It will also divert the focus from an unjust law or policy to that of violence and will be counterproductive. Gandhi, for example, adopted non-violent actions in areas such as politics and religion to attract the public's sympathy together. This strengthened his desired outcome. Non-violent action has power. Responsibility will fall upon the civil disobedient if they exercise violence. But if the civil disobedient individuals adopts a non-violent action and bears the criminal liability, the authority needs to show a strong moral and political responsibility to suppress the non-violent actions. Whereas with a revolution, it is justified when the regime is extremely unjust and unfair that citizens do not have obligations to obey the regime. There might even be a need to overthrow the existing regime. However adoption of a violent revolution needs careful consideration regarding the consequences.

Q Are there any outstanding examples of civil disobedience in Hong Kong?

A On 2 October 2000, Hong Kong Federation of Students (HKFS) deliberately used the language of civil disobedience and publicly explained the reasons for not to apply for "Letter of no objection" by police according to Public Order Ordinance. HKFS held an unauthorized assembly and protest to oppose the infringement of freedom of expression by the Public Order Ordinance.

Footnote:

[1] AM730. "Arthur Li analogized Occupy Central as shop theft. Benny Tai rebutted Li had confused civil disobedience and mere crime". 26 June 2013.

[2] Lai Tung Kwok, Secretary for Security. "The Nature of Occupy Central and its Impact on Society and Participants". 12 June 2014.

SCHOOL EDUCATION AND POLITICS

Politics is the business of all people and is inextricably linked with our daily life. What criteria can be referred to if teachers and students have a discussion about controversial issues in class?

BACKGROUND

In the 1950s, the Chinese Nationalist Party and Communist Party competed for an ideological position in Hong Kong. The Hong Kong government tried to regulate the schools through the Education Ordinance, prohibiting school teachers and students from participating in any political activities and propaganda. During the 1989 Democracy Movement, many teachers and students in Hong Kong discussed and participated in demonstrations, which violated the ban on political activities.

In 1990, the government revised the Education Ordinance and Education Regulations, slightly relaxing the restriction on schools' participation in politics. For instance, section 84(1) of the Education Ordinance, the clause which prohibits schools from participating in political activities had been modified to "the control of the dissemination of information, or expression of opinion, of a clearly biased political nature in schools"; Regulation 98(2) had been introduced to the Education Regulations, which states that "the Permanent Secretary may give directions in writing or other guidance to the management authority of any school as to the dissemination of information or expression of opinion of a political nature in that school, so as to ensure that that information or opinion is unbiased." In 1997, Christine Loh Kung Wai, a former Legislative Councillor, held that the above provisions were tantamount to an open invitation to political censorship and requested repealing the relevant provisions. Yet, the government opposed this proposal and many Legislative Councillors voted against it.^[1]

THE RESPECT FOR HUMAN RIGHTS IS INCLUDED AS PURPOSE OF EDUCATION

The purpose of education includes nurturing students to respect human rights, which can be found in the international human rights instruments. For instance, Article 26(2) of the Universal Declaration of Human Rights states that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." The Code for the Education Profession of Hong Kong also states in "2.6 Commitment to the community" that teachers "shall treat as a primary duty the teaching of respect for human rights", "shall do his/her best to nurture in students the concepts of freedom, peace, equality, rationality and democracy", "shall set an example in the performance of civic obligations" and "shall actively support and promote civic education".

CLASS DISCUSSIONS ABOUT CONTROVERSIAL ISSUES

By virtue of Regulation 98(2) of the Education Regulations, teachers should be impartial when discussing controversial issues in class. Yet, setting out both the positive and negative arguments is not necessarily tantamount to being impartial. In the United Kingdom court case which concerns political indoctrination through teaching materials distributed by the government, the judge pointed out that presenting different views in a balanced way was not asking teachers to explain the opposite views using the same amount of time, but to be fair and dispassionate.^[2] In the case of *Cho Man Kit v. Broadcasting Authority*,^[3] the Hon Mr. Justice Michael John Hartmann pointed out that it was hard for "both sides of the story" to be put in an RTHK programme dealing with the fight against bird flu or child slavery.^[4] He also stated that "impartiality may demand no more than that the subject matter is dealt with fairly; that no prejudice is shown."^[5]

EXTRACURRICULAR ACTIVITIES AND NEGLIGENCE

As for extracurricular activities, if teachers fail to deter students from participating in social movements and as a result the students are injured, would teachers have to bear civil liability for being negligent?

There are 4 indispensable elements in the tort of negligence, namely duty of care, the breach of duty, causation and reasonable foreseeability of harm.^[6] Generally speaking, teachers owe a duty of care for the behaviour of students within schools, but not for what happens outside schools. If students are injured when participating in social movements outside school, in which the harm is not directly inflicted by the teacher and the social movement has nothing to do with the school, then it is highly unlikely that the 4 elements in negligence would be fulfilled.

Yet, if the risk of getting injured is known to the teacher and the teacher still encourages or even leads the students to participate in a particular social movement, then there is a possibility that the teacher would be liable in the tort of negligence. But it is hard to prove whether the harm is directly inflicted by the school or teacher.

Extracurricular activities organized or approved by schools, including study tours and field trips, all carry the risk of injury. In order to reduce such risk, one should conduct the 5 steps risk assessment and take safety precautions.^[7]

Footnote:

- [1] Legislative Council Brief. "1996 Education (Amendment) Bill." 8 October 1996. LC Paper No. CB (1) 132/96-97 (01). Hong Kong Human Rights Monitor. "Brief History of National Education." August 2011
- [2] Chong Yiu Kwong. "Submission on consultation on moral and national education." 27 June 2011. CB (2) 2240/10-11 (01)
- [3] Cho Man Kit v. Broadcasting Authority. HCAL69/2007. Date of Judgment: 8 May 2008.
- [4] Ibid. Para 71.
- [5] Ibid. Para 74, 75.
- [6] T v Kan Ki Keung, Stephen & the Methodist College. [2002] 1 HKLRD 29, HCPI 443/2000. 21 December 2001. Chong Yiu Kwong. "The legal issues of the tort of negligence." The Rule of Law Education Project. Faculty of Law. The University of Hong Kong. 28 June 2014.
- [7] Chong Yiu Kwong. "Social Welfare and Law: Communication and Empowerment (Expanded second edition)." co-edited by Chiu Man Chung, Hung Shirley and Chong Yiu Kwong. Hong Kong: Red Publication. 2011.

Reference materials:

This article makes reference to "Potential legal risks of liberal studies and rights and restrictions of teachers", a seminar organized by the Faculty of Law of the University of Hong Kong on 28 June 2014. Video please see: <http://www.role.hku.hk/>



AI GLOBAL CAMPAIGNS



毋忘天安门镇压
毋忘六四

GLEMIKKE
MASSAKREN PA
DEN HIMMELSE
FREDS Plass

25 AF SIDEN
4. JUNI 1989

AI NORWAY : SOLIDARITY WITH JUNE 4 ACTIVISTS IN CHINA

AI Norway marked the anniversary of the Tiananmen Square Massacre still as an open wound on 4 June, they stood in front of several symbolic buildings including Parliament and the Chinese embassy. Many activists were detained in China during this time because they discussed the 25th anniversary of the Tiananmen Square Massacre. People took part in the campaign by taking a picture with the Tank Man in order to show solidarity with detained activists in China.

Action in video: <http://youtu.be/Eld2jH-5W9s>

AI TOGO : MY BODY MY RIGHTS TRAINING WORKSHOPS FOR YOUNG ACTIVISTS

My Body My Rights campaign was launched on 6 March with a workshop on "Speak Out". AI Togo focused on trainings for young activists to become trainers and activists.

AI NEPAL : BRING BACK OUR GIRLS CAMPAIGN

AI Nepal organized a demonstration on 27 May, which was Children's Day in Nigeria. It urged the Nigerian Government and Boko Haram for the safe and immediate release of the school girls who had been abducted by Boko Haram.

Photo Credit: Amnesty International Nepal

AI POLAND : STAND BETWEEN THE TORTURER AND THE TORTURED

AI Poland organized a photo action "Stand between the torturer and the tortured" on 17 May when the Stop Torture campaign was launched. It asked lawyers, courts, doctors, activists and campaigners to stand between the tortured and the torturer.

Photo Credit: Amnesty International Poland / Grzegorz Żukowski



GOOD NEWS



CHINA: SUPREME COURT OVERTURNS DEATH SENTENCE OF LI YAN

Thanks to our members and supporters who have been campaigning hard on behalf of Li Yan for a year. China's Supreme People's Court has overturned Li's death sentence, a woman convicted of killing her husband after suffering months of domestic violence.

Amnesty International highlights the urgent need for authorities to do more to prevent violence against women. Any retrial must fully consider the evidence of the sustained abuse Li suffered, which was overlooked during the first trial. The Court must not impose the death sentence this time.

SUDAN: MERIAM WAS RELEASED FROM DEATH SENTENCE

Converting from Muslim to Christian, with a view to becoming married to a Christian American, 27 year-old Meriam Yehya Ibrahim received a death sentence by hanging for "apostasy" and to flogging for "adultery". Amnesty International launched an urgent action to fight for her release. Thanks for massive support of those who signed petitions and cried for justice, Sudan released her on 25 June.



IRAN: STUDENT ACTIVIST HAS RETURNED HOME AFTER COMPLETING THE SENTENCE

Student activist Majid Dorri was released from prison on 12 June after completing a 5-year prison sentence. He was arrested in 2009 and charged with enmity towards God, acting against national security and disrupting public order. He was sentenced to 6.5 years. Amnesty International recognizes him as Prisoner of Conscience as he has been jailed because of his right to exercise freedom of expression.

LOCAL HAPPENINGS



NAME

Chan Kin Man

OCCUPATION

**Associate Professor
Department of
Sociology, CUHK**

Director

**Centre for Civil Society
Studies, HKIPAS, CUHK**

YEARS WITH US

Many years

THIS IS YOUR PAGE: CHAN KIN MAN

Why do you support Amnesty International?

Amnesty International is one of the few organizations willing to fight for human rights against all odds. Many non-governmental organizations (NGOs) across the world are willing to engage in community welfare and advocacy work while few are willing to stand up for human rights. This is because human rights offences often involve the government or powerful groups including religious bodies and so the majority of NGOs refrain from getting involved to avoid jeopardizing themselves. Yet, the existence of a civil society and NGOs is necessary to regulate the government where human rights issues often stem from. Fortunately, Amnesty International is one of the few that will fight for human rights which is why I support you.

What do you think the candle that represents Amnesty International stands for?

I believe the candle represents the human conscience. However, people can be jailed for defending their conscience which is why the candle is bounded by barbed wire. I believe this is related to Amnesty International's work for Prisoners of Conscience.

How would you persuade your friends to become part of our human rights movements?

Over the past 10 years, I have conducted most of my work in China by advocating the need of a civil society and civil rights which was often related to basic human rights like freedom of expression and freedom of assembly. Some of my friends have been arrested for defending human rights and so I continuously explain the concepts of basic human rights civil rights which we must strive to defend. This is of particular significance in China where the concept of citizens does not exist as there is only the idea of the People. However, the People are divided into the People and enemies of the People by the government and once you are labeled an enemy of the People all basic human rights such as freedom of expression and the right to fair trials are eradicated. This is a frightening condition which is why I struggle to instill the need for a civil society and the rights of a citizen including freedoms of expression, assembly, political rights and so on which are often not enjoyed by the People. I also assist in establishing NGOs in China, which is a way of exercising civil rights, so that more people can become involved.

If you were granted the power to wish away one human rights issue, what would that be?

I wish the day would come where democracy could be established in every country and the basic rights of people could therefore be safeguarded. Democracy does not necessarily pave the way of economic prosperity but it will certainly lead to the improvement of human rights. Perhaps not every single problem can be resolved but at least the most imminent crises including torture and unfair trials can be eliminated. Democracy has the ability to stop these injustices.

HUMAN RIGHTS FRIDAY

We have started our Human Rights Friday evening dialogue series so as to engage citizens on human rights issues.

The first Human Rights Friday was held on 30 May, with the topic "In the frontline of defending press freedom". Vivian Lu, current correspondent of Ming Pao and Eric Poon, judge of the Human Rights Press Awards, shared their experience with participants about the challenges when conducting media reports. They also gave their views on how journalists as well as citizens could keep defending press freedom.

Human Rights Friday takes place on the last Friday evening of every alternative month at TC2, Prince Edward. Follow our Facebook page to get the updates of upcoming dialogues.

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MY BODY MY RIGHTS VOLUNTEER RECRUITMENT

In Burkina Faso, women can be refused contraceptives at health clinics unless they are accompanied by their husbands. In Morocco, girls can be forced to marry their rapists to preserve family honour and "protect" the attacker from prosecution. Over 150,000 women travelled to the UK from Ireland for a termination between 1980 and 2012 because abortion there is illegal unless the woman's life is at serious risk. And in many countries, loving someone of the same gender – or simply dressing outside the social norm – is enough to land you in jail.

Through My Body My Rights campaign (MBMR), we break the silence. If you are interested in defending sexual and reproductive rights, stand up and join us. We will expose states that violate these rights and demand change.



MBMR Group will bring you: training on sexual and reproductive rights, empowerment, and campaign opportunities. You will get into global issues of sexuality, sex/gender, sexual rights as human rights.

Registration: volunteer@amnesty.org.hk

Open to all gender and sexual orientations. Campaign experience not required.
All volunteers must be Amnesty International Hong Kong members. You will be asked to register later. Membership: \$20 (full-time student), \$100 (individual).

DISOBE

STREET STATION ON 1 JULY MARCH

Amnesty International Hong Kong set up a street station in Wan Chai during the 1 July march to explain the concept of civil disobedience. We thank all interns and volunteers who facilitated organizing this.



國際特赦組織香港分會

國際特赦組織香港分會

國際特赦組織香港分會

公義抗爭

公義抗爭

公義抗爭

3 Date 1 July

3 Date 1 July

3 Date 1 July

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七一街站

今年七一遊行，國際特赦組織香港分會於灣仔擺放街站，向遊行人士解釋公民抗命概念。感謝實習生落力籌備是次街站及文宣工作，也感謝義工協助。

DISOBEY

DISOBEY

SOBEDI



國際特赦組織香港分會

國際特赦組織香港分會

國際特赦組織香港分會

公義抗爭

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本地迴響

人權星期五

每逢單數月份的最後一個星期五，我們都會在太子「CG2」舉辦「人權星期五」的聚會，與公眾探討人權議題。

首次聚會於五月三十日舉行，題目為「走在捍衛新聞自由的前沿」，人權新聞獎評判潘達培及現職記者陸文與我們的會員及支持者分享了從事傳媒工作所遇到的挑戰，亦談及新聞工作者及公眾如何繼續捍衛新聞自由。

有興趣參與「人權星期五」，請留意

www.facebook.com/AmnestyHK



你的一頁：陳健民



姓名
陳健民

職業

／香港中文大學社會學系副教授
／香港中文大學亞太研究所
公民社會研究中心主任

與國際特赦組織同行
認識多年

你為甚麼會支持國際特赦組織？

因為國際特赦組織是少數願意為人權發聲的國際組織。世界各地有很多非政府組織從事社會公益工作或倡導工作，但願意為基本人權發聲的組織少之又少，背後的原因往往是因為人權問題大多會牽涉到政府甚或有勢力的組織（例如宗教團體），所以為了保持本身的純潔和避免將自身置於危險的處境，大多數非政府組織也會盡量避免接觸與人權有關的爭議。我們經常會發現侵犯人權的一方是政府，因此必須有公民社會及非政府組織作為監督平台或是平衡機制。

你認為國際特赦組織的蠟燭標誌代表甚麼？

我認為蠟燭是良心及良知的代表，但有人可能因維護良知而遭囚禁，就如蠟燭被荊棘和鐵絲所包圍一樣，這應該和國際特赦組織致力幫助良心犯有直接關係。

你會如何遊說朋友加入我們的人權運動？

過去數十年，我大部分工作都在中國進行，推動公民社會的重要性及倡議公民權利，與一些最基本人權有關，例如言論自由和集會自由等。曾經有些朋友因為維權而被捕，所以我一直說人權及公民權利是我們必須極力捍衛的基本權利。中國沒有公民的概念，只有人民的概念，而人民更加被政府劃分為人民以及人民的敵人，兩者並不會享有同等權利，當你一旦被標籤為人民的敵人，你連最基本的言論自由和獲公平審判的權利也會失去。這是很可怕的景象，所以我會不斷向他們解釋公民和人民的分別，例如公民的概念包括公民權利（言論、集會及政治權利等）和公民責任，同時我亦會幫助很多非政府組織於中國成立，因為這也是行使公民權利的方法，讓更多人參與人權行動，並倡議公民權利。

如果可以願望成真，而只能許一個願，你會選擇解決甚麼人權問題？

我希望看到世界各地也能建立民主體制，令更多人的基本人權得到保障，因為我認為人權和民主息息相關。雖然民主體制不一定能夠推動經濟起飛，但往往為改善人權狀況作出貢獻。我明白我們不能夠解決世界上所有問題，但最起碼要先解決最迫切的問題和痛苦，例如酷刑和不公平審訊等，而民主體制正在這一方面有很大功效。

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《世界人權宣言》：「每個人有權生活在尊重權利和自由的世界。」
國際特赦組織自一九六一年起致力捍衛人權和自由，你可與我們一起為人權和自由奮鬥！穿上我們最新設計的人權Tee，就可隨時隨地感染你身邊的朋友，加入我們的行動。請即訂購！登入我們 Facebook 網上商店 (www.facebook.com/AmnestyHK) 或 <http://ahkshop.ecwid.com>，將人權和自由的漣漪擴至全世界。



誠徵 MY BODY MY RIGHTS
小組義工

在布基納法索，女性只有在丈夫陪同下，才可從診所取得避孕藥。在摩洛哥，性侵害受害者被強迫嫁給強暴者，以維護家族面子和「保護」強暴者免遭檢控。從一九八〇年至二〇一二年，超過十五萬名女性從愛爾蘭遠赴英國墮胎，因為在愛爾蘭，女性只有在嚴重生命危險時才可墮胎。在很多國家，愛上同性，或僅僅只是穿衣比較「脫俗」，足以讓你判刑。

讓我們透過信誼 My Body My Rights 運動，打破沉默。如果你對捍衛性權與生育權有興趣，請加入我們，一同揭露這些國家的侵權情況，推動改革。

參加 MBMR 小組，你會得到性權與生育權的人權專業訓練及改變世界的機會。你將有機會接觸有關性、性別、性權的全球人權議題。

報名：volunteer@amnesty.org.hk

歡迎所有性別及性傾向人士參加。
不需有舉辦活動的經驗。
所有參加小組的義工必須成為國際特赦組織香港分會會員，加入小組後將獲入會表格。
入會費為學生二十港元或個人會員一百港元。

全球人權運動



挪威分會：聲援中國維權人士

今年六月四日，挪威分會在挪威國會大樓及中國領事館前，宣示一九八九年北京天安門鎮壓至今仍是淌血的歷史傷口。六月以來，討論六四廿五周年的中國維權人士均遭中國當局拘禁。當日，公眾透過與撞坦克的人合照的行動，以示聲援被拘禁的中國維權人士，並紀念六四廿五周年。

行動短片：<http://youtu.be/EId2JH-5W9s>

多哥分會：給年青人的 My Body My Rights 訓練工作坊

國際特赦組織多哥分會於今年二月六日推行 My Body My Rights 運動，首個活動是「發聲」工作坊，聚焦培訓青年行動者，讓他們將身體自主權的訊息廣泛傳揚。

尼泊爾分會：釋放女孩運動

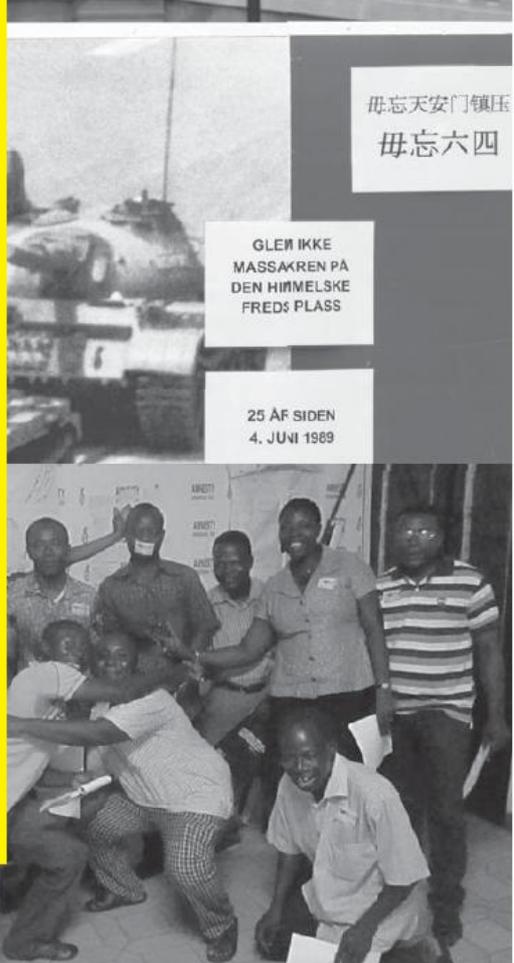
五月廿七日，是尼泊爾兒童節。尼泊爾分會於當日示威，促請尼泊爾政府及「博科聖地」立即釋放遭綁架的女學生。

Photo Credit: Amnesty International Nepal

波蘭分會：站在施虐者與受虐者之間

在五月十七日，即開展停止酷刑運動的首個星期，波蘭分會舉行名為「站在施虐者與受虐者之間」的照片徵集活動。他們呼籲律師、法院、醫生及社運人士站在施虐者與受虐者之間，提供保障措施才是解決辦法。

Photo Credit: Amnesty International Poland / Grzegorz Żukowski



好消息



中國：最高法院推翻李彥死刑判決

感謝各位會員及支持者於過去一年多以來的努力，為中國四川家暴受害人李彥向中國政府發出呼籲。今年五月，中國最高人民法院推翻了李彥的死刑判決。

國際特赦組織重申，中國政府有需要推出更多措施，以防止針對女性的暴力事件再次發生。例如李彥案獲得重審，法院理應考慮於初審中忽略其長期受到虐待的證據，並不應判處李彥死刑。

伊朗：學生領袖刑滿出獄 安全回家

伊朗學生領袖 Majid Dorri 於二〇〇九年因觸犯「褻瀆宗教」、「危害國家安全」及「擾亂公眾秩序」被捕，隨後更被判監六年半。Majid 因行使言論自由的權利而被監禁，因此國際特赦組織視他為良心犯。他於六月十二日提早獲釋。

蘇丹：Meriam Yahia Ibrahim Ishag 獲釋

為了跟美籍基督徒結婚，Meriam Yahia Ibrahim Ishag 由伊斯蘭教改信基督教，後來因「叛教罪」及「通姦罪」而被判處死刑。國際特赦組織馬上發出緊急行動，要求蘇丹政府立刻釋放 Meriam。我們衷心感謝每位參與聯署的朋友，Meriam 已於六月二十五日獲釋。

政治乃眾人之事，與我們日常生活密不可分。討論時政亦是公民教育及通識教育不可或缺的內容。教師處理爭議性議題時，有何標準可作參考？

背景

一九五〇年代，國民黨與共產黨在香港爭奪意識形態的陣地，香港政府透過《教育條例》規管學校，禁止學校及師生參與政治活動及宣傳。一九八九年北京民運，有香港師生討論民運並參與聲援遊行，違反不准參與政治的禁令。當局於一九九〇年修改《教育條例》及《教育規例》，稍稍放寬學校參與政治的規定。譬如將《教育條例》第八十四(一)條有關禁止師生參與政治活動條文改為「(三)對在學校傳布或表達顯然有偏頗的政治性質的資料或言論的管制」及在《教育規例》訂立第九十八(二)條「署長(按：現為常任秘書長)可就任何學校傳播政治性資料或表達政治性意見方面，向該校的管理當局給予書面指示或其他指引，以確保該等資料或意見並無偏頗」等。一九九七年，陸恭蕙議員認為上述條文「形同公開邀請當局進行政治審查」，並在立法局提出廢除條文，但遭政府和不少議員反對，廢除不果。^[1]

教育目的包括尊重人權

教育的目的包括培養學童尊重人權，見諸於國際人權文書。譬如《世界人權宣言》第二十六(二)條訂明「教育的目的在於充分發展人的個性，並加強對人權和基本自由的尊重」及《兒童權利公約》第二十九(一)條訂明「培養對人權和基本自由以及《聯合國憲章》所載各項原則的尊重」。而香港《教育工作者專業守則》「2.6對公眾的義務」訂明教師「應把尊重人權的教育視為要務」及「應致力培養學生的自由、和平、平等、理性、民主等意識」，教師亦「應以身作則履行公民的義務」及「應積極支持及推廣公民教育」。

課堂討論爭議性議題

若教師與學生在課堂上討論爭議性議題，有何準則可供參考？

從《教育規例》第九十八(二)條的規定，可見教師在課堂上討論爭議性議題應不偏不倚。但並非凡事鋪陳正反論點就是持平。在英國一宗關於政府派發教材涉政治灌輸的案件，法官指出「平衡(balanced)展示不同觀點，並非要求老師用同等時間來闡釋相反觀點，而是要做到公平公正(fair and dispassionate)」。^[2]在香港電台節目鏗鏘集《同志戀人》司法覆核案，高等法院法官夏正民指出「在某些議題如對抗禽流感或兒童奴隸，難以正反並論」，「持平即是「公平處理議題(dealt with fairly)，並無偏袒(no prejudice is shown)」。^[3]

課外活動與疏忽責任

至於校外活動，若學生自行參與社會運動，而教師並無阻止，學生最終受傷，教師會否負上疏忽照顧學生的民事責任？

疏忽有四個元素，包括「照顧責任、失責、因果關係及失責導致可合理預見的損失」，缺一不可。^[1]一般而言，教師對學生校內行為負有照顧責任，但對校外行為則不然。若學生自行於校外參與社會運動而受傷，教師並無直接令學生受傷，該社會運動亦與學校無關，極難符合疏忽民事責任的元素。

但若教師明知有可能受傷，仍不斷鼓勵學生甚至帶領學生參與特定社會行動，則有疏忽民事責任的風險，當中最難證明學校或教師的失責導致學生損傷。

凡是學校舉辦或批准的課外活動，包括遊學團及課外考察，均有受傷風險。教師須照顧學生安全。若要減低風險，應採用風險評估五部曲，採取預防措施。^[2]

註釋

- [1] 立法局參考資料摘要《一九九六年教育(修訂)條例草案》，一九九六年十月八日，立法會CB(1)132/96-97(01)號文件；香港人權監察《簡史：國民教育的前世今生》，二〇一一年八月。
- [2] 莊耀洸《就德育及國民教育科課程指引諮詢稿向立法會教育事務委員會提交之意見書》，二〇一一年六月二十七日，立法會CB(2)2240/10-11(01)號文件。
- [3] Cho Man Kit v. Broadcasting Authority, HCAL69/2007. Date of Judgment: 8 May 2008.
- [4] 同註[3]，段七十一。
- [5] 同註[3]，段六十四及七十五。
- [6] T v Kan Ki Keung, Stephen & the Methodist College. [2002] 1 HKLRD 29, HQPI 443/2000, 21 December 2001. 莊耀洸《民事疏忽法律問題探討》，香港大學法律學院法治教育計劃，二〇一四年六月二十八日。
- [7] 莊耀洸《戶外活動》——《社會福利與法律應用：溝通與充權(增訂再版)》，趙文宗、洪雪蓮、莊耀洸編，紅投資有限公司，香港，二〇一一年。

參考資料

本文參考香港大學法律學院法治教育計劃於二〇一四年六月二十八日「通識教學中潛在的法律風險及教師的權利和限制」講座的内容。影片請見：<http://www.rolie.hku.hk/>

專訪——陳祖為談公民抗命

問 / 國際特赦組織香港分會
答 / 陳祖為（香港大學政治與公共行政學系教授）

問 公民抗命與非暴力抗爭有何分別？

答 公民抗命歷史較長，有不同說法。狹義來說，公民抗命假設政治制度仍可接受，並非太不公正和太腐敗，但部分法律或政策非常不合理不公平，譬如嚴重侵犯人權、歧視及違反程序公義等。

公民抗命與暴力革命不同，因為暴力革命旨在推翻政治體制，而公民抗命旨在改變法律或政策，採用非暴力手法。公民抗命亦與合法抗爭不同，因為公民抗命必然違法。至於非暴力抗爭，定義較為籠統，包括合法及違法抗爭。

公民抗命者須公開解說公民抗命的理據，指出其抗議的法律或制度不符一般人所認同和相信的政治價值原則，並真誠抗命，其行動出於對信念的堅持，而不是出於個人利益。

此外，公民抗命與良心反抗不同。譬如有人基於殺生違反宗教信仰而拒絕服兵役，此屬良心反抗。良心反抗者很多時訴諸個人的宗教或道德信仰，而公民抗命訴諸大眾政治原則。良心反抗者並不一定倡議改變法律或政策；公民抗命則面向公眾，透過以身試法引起討論，從而尋求改變法律或政策。

問 一般來說，公民抗命是窮盡方法之後也改變不了不公正狀況的最後一著（last resort）。就香港政制而言，是否已別無他法，要行使公民抗命？

答 現時為了爭取符合國際人權標準的普選，應該已用了不少辦法，譬如參與政改諮詢及遊行等。現階段的佔領中環只是一種威脅，若然爭取到符合國際人權標準的普選，就不用佔領中環，不然，如政府最終拿不出真正的普選方案，相信會出現佔領中環的公民抗命。

問 公民抗命的目的是提倡改良不義法律或政策，前提仍是認同體制。在香港，有些人認同一國兩制，但不認同中國一黨專政，是否適宜公民抗命？

答 公民抗命，譬如佔領中環只是要求普選，而不是改變香港整個制度，而普選是當權者所應許，並於《基本法》訂明，符合公民抗命的前提。佔領中環針對的是香港政治選舉，並非針對中國。即使只認同一國兩制，不認同中國一黨專政，公民抗命仍然適用。

廣義來說，如果整體制度極不合理，公民抗命較易為人接受。但若整體制度相對合理，只是部分法律或政策不合理，公民抗命需要有充分理據並願意接受法律制裁，否則便是視法律如無物，輕視相對合理的制度。

所以公民抗命者必須：（一）公開說明公民抗命的理據；（二）不為私利；（三）如 John Rawls 視公民抗命為最後一著，先盡可能使用其他合法方式表達意見，譬如示威或遊說議員等，仍告無效才公民抗命——但此說法有爭議；（四）願意接受法律制裁，其前設是在相對合理的制度下，公民抗命者承擔法律責任，以示尊重法治，又或是公民抗命者的理據可能有錯而甘於受罰，如此才可說服公眾支持。

至於如何裁判，視乎法官是否尊重公民抗命，將它與一般犯罪行為區分，予以輕判。

問 你認為中央及香港政府會如何打壓佔領中環？打壓到甚麼程度？中國以「消滅於萌芽」打壓中國維權運動，這種手法會否套用於香港？

答 現階段難以估計。中國已用盡法律許可的方式打壓佔領中環，譬如有反對佔領中環的民間組織、局長出言反對及中國官媒批評佔領中環是非法的鬧劇等。至於中央及香港政府會如何應對佔領中環，視乎屆時參與人數及場面。

問 為何公民抗命須採用非暴力手法？

答 在相對合理制度下，宜採用非暴力手法，因為沒有充足理據而使用暴力，難以令人信服，亦會轉移焦點，不再聚焦於不合理的法律或政策，適得其反。譬如甘地採用非暴力抗爭有複雜考慮，包括政治、宗教、政治效果及可否爭取公眾同情。非暴力有其實際力量。如果行使暴力，責任會落在公民抗命者一方。若抗命者採取非暴力方式又承擔法律責任，當權者若要大力鎮壓就要付上巨大的道德及政治責任。至於革命，則是在制度極不合理極不公正，公民無責任遵從該制度，甚至有責任推翻時才可考慮，但是否應該暴力革命，則需慎重衡量暴力革命帶來的後果。

問 你認為公民抗命對於獨裁政權以及如香港般置於獨裁政權下的自由社會有何意義？

答 香港有半民主的政治體制，實行一國兩制，高度自治，並且是法治社會。我們應有國際視野，認識公民抗命有異於一般犯罪，接受這種在民主社會中的特別政治行為。

在香港，官員及建制派將公民抗命等同一般犯罪，譬如有報道指行政會議成員李國章以「店舖盜竊類比佔領中環」^[1]及保安局局長黎棟國指佔領中環犯法，公民抗命不可凌駕法律。^[2]其實，公民抗命與一般犯罪不同，並不是為個人利益而犯法。一般犯罪為了私利，犯罪後逃避刑責，而公民抗命是基於公眾利益的公開行動，目的是改變他們認為不義的法律或政策。而正因為尊重整體制度及法治，才會甘於接受法律制裁。中國並無公民抗命的概念，認為公民抗命就是挑戰政權。而香港與中國不同，不應以獨裁政治體制的角度理解公民抗命。

問 香港有否公民抗命的突出例子？

答 二〇〇〇年十月二日，香港專上學生聯會自覺使用公民抗命的語言，公開解釋拒絕按《公安條例》的規定向警方申請「不反對通知書」的由，透過非法集會遊行抗議《公安條例》侵犯香港市民的表達自由。

註釋

[1] 〈李國章以店舖盜竊類比佔中戴耀廷：混淆公民抗命與犯罪〉，刊於AM730，二〇一二年六月二十六日。

[2] 黎棟國〈佔中本質與影響〉，二〇一四年六月十二日。

誰會公民抗命？

印度

甘地



一九三〇年，為了抗議英國殖民政府壟斷食鹽兼且向印度人民徵收苛重鹽稅，甘地與群眾長征，徒步到海邊製作私鹽，遭到拘捕。在一連串公民抗命行動後，殖民政府放寬買賣私鹽規定。

（相片來源：Wikimedia Commons, File: Gandhi thinking mood 1931.jpg）

美國

馬丁路德金

ROSA PARKS



十九世紀末至二十世紀初，美國實施一系列種族隔離法例。譬如在阿拉巴馬州蒙哥馬利市，公營巴士前排座位白人專用，後排座位黑人專用，若滿座，靠近前排的黑人必須讓座予白人。

一九五五年，非裔女子 Rosa Parks 坐在靠近前排的黑人座位。巴士司機要求她讓座予白人，她斷然拒絕，竟遭警方拘捕，法庭裁定她違反種族隔離法罪成罰款。

此事引發大規模黑人種運動，譬如在馬丁路德金領導下，黑人展開長達三百八十一日的杯葛蒙哥馬利巴士運動，反對種族隔離惡法，及至一九五六年，美國最高法院下令州政府廢除公共交通種族隔離政策。一九六四年，國會通過民權法案，禁止種族歧視。

（相片來源：Wikimedia Commons,

File: Rosa Parks (detail).tiff Copyright Credit: QMI USA）

香港

香港專上學生聯會



自一九八九年十二月，學聯拒絕就遊行集會向警方申請牌照或不反對通知書，以公民抗命形式反對《公安條例》。今年七一遊行，學聯與聲援市民通宵留守遮打道，透過公民抗命爭取普選。警方翌日清場，並以涉嫌非法集結拘捕五百一十一人。

（相片來源：學聯 Facebook）

民間電台

由曾健成發起的民間電台，透過無牌廣播爭取政府修例開放大氣電波。民間電台成員纏訟數年。二〇〇九年，區域法院法官游德康裁定民間電台成員非法廣播罪成，但指「相信各被告希望透過公民抗命，爭取大氣電波開放，認為他們意圖高尚，唯一選擇是判處罰款」。^[1]



（相片來源：民間電台網頁）

註釋

[1] 明報。〈民間電台判罰款今晚續播〉。二〇〇九年十一月九日。

台灣

佔領立法院人士



台灣學生發起反對《兩岸服務貿易協議》運動，佔領立法院議場二十三日。佔領立法院四人被捕。

(相片來源：Wikimedia Commons, File: Crowd Outside the Legislative Yuan.jpg)

香港

反高鐵市民



廣深港高鐵工程甚具爭議，包括強收菜園村土地、造價高昂、欠諮詢、功能組別護航及發展模式備受質疑等，引發反高鐵社會運動。二〇一〇年一月十六日，反高鐵示威人士抗議立法會最終通過六百六十九億高鐵撥款，衝出中環德輔道中、遮打道及皇后大道馬路包圍立法會，官員一度滯留立法會內。無人被捕。

(相片來源：柏齊)

中國

天安門廣場的示威學生和人民



一九八九年，學生於天安門廣場絕食、靜坐抗議，提出反貪腐、爭取民主、新聞自由及言論自由等訴求，並獲人民廣泛支持。然而中國政府將民運定性為動亂，出動軍隊血腥鎮壓，時至今日仍無公正調查。

(相片來源：Wikimedia Commons, File: 318-3.jpg)

反對興建文化工廠的示威人民

近年，中國有許多大型示威，譬如二〇一四年在廣東省茂名市民遊行反對興建PX化學工廠計劃，遭警方鎮壓，官方指遊行違法，同時封鎖消息。

(相片來源：網絡圖片及主場新聞《廣州民眾示威聲援茂名反PX》)



反國教市民

二〇一二年，學民思潮發起反對德育及國民教育獨立成科（反國教）運動，並與民間團體組成民間反對國民教育科大聯盟，未經申請通宵紮營佔領政府總部廣場、絕食以及逾萬人每晚參與集會，歷時十日，最高集會人數為十二萬人。政府最終擱置德育及國民教育科課程指引。



(相片來源：柏齊)

前言

前監警會主席翟紹唐資深大律師曾在訪問中稱，公民抗命在不少普通法國家已有數百年歷史，「看不到有影響法治」，並引述英國法院判辭指「公民抗命是優良傳統」，「參與者要準備承擔法律責任」。^[1]公民抗命是甚麼？讓我們來一起探討。

抗議不義之法和政策

公民抗命，又稱公民不服從，此詞源自梭羅〈公民抗命的責任〉一文。梭羅因反戰和反對奴隸制度而拒絕交稅，並因此入獄。他認為「當法律有違道德，最高尚的責任就是違反這些法律，並接受懲處，引導社會大眾關注事件的不公」。^[2]

公民抗命是指公民出於良知，蓄意採用非暴力手法公開以身試法，並承擔法律責任，以抗議及突顯不公義的法律或政策的政治行為來引起社會關注，促使政治制度、法律或政策改革。^[3]

至於在何種情況行使公民抗命，一般來說，在窮盡途徑，別無他法的情況下，為了阻止政策或惡法繼續損害社會公義，公民可行使公民抗命。^[4]譬如 John Rawls 認為行使公民抗命的條件包括「嚴重侵犯平等自由」、「真誠向政治多數的正常申訴後，仍然無濟於事，公民抗命便是最後手段」及「少數群體組成政治聯盟公民抗命，以免公民抗命人數過多，令法律和憲法崩潰」。^[5]

時至今日，公民抗命概念尚在發展，仍有許多學術討論。

聯合國非暴力抵抗

聯合國《世界人權宣言》第二十一條指「人民意志是政府權力基礎」。聯合國提倡「非暴力抵抗」，即「拒絕使用任何肢體暴力達至社會或政治變革」。非暴力理論其中一個重要原則是主權在民，「人民可透過非暴力方式撤回同意以及拒絕合作，以削弱統治者權力」。非暴力行動大致分為「抗議及游說，包括遊行及通宵晚會」、「不合作運動」及「非暴力干預，包括圍堵以及佔領行動」。^[6]

公民抗命並無影響法治

雖然公民抗命觸犯法律，但與純粹犯罪不同，公民抗命是出於良知公義，在認同現行政治及法律制度的合法性的前提下，公開以身試法，並願意接受法律制裁，促使改革政治制度、修改不公義的政策或法律，以保障公義及人權。^[7]這符合法治最高層次「以法達義」，「不會破壞法治」。

公民抗命的重要性

有人或會擔心公民抗命會引致社會混亂。反之，John Rawls 指出「如果公民抗命威脅社會和諧，責任不在抗命者，而在於濫權的人」。

[6] John Rawls 指「雖然公民抗命違法，但它鞏固憲政制度」，「若行使公民抗命時有適當限制及準確判斷，有助維持及加強公義制度」，並可「穩定秩序井然甚或接近正義的社會」。^[10] 國學大師余英時亦指「公民抗命不但是破壞政治、社會、經濟秩序的激烈行為，而且是以一種和平、最理性、也最文明的方式促使秩序更合理化的運動」。^[11]

公民抗命是現代自由民主社會政治文化的一部分。^[12] 有普通法法院認同公民抗命的重要性，譬如英國上議院判辭指「在英國，基於良知而公民抗命有悠久和光榮歷史。有時歷史會為那些反對不公法律或政府施政而以身試法的人平反，爭取婦女參政就是一例。可包容公民抗命此類示威遊行，是文明社會的標記」；又指公民抗命的「示威人士表現合乎比例，不會造成過分損害或不便」，並承擔法律責任接受懲處，另一方面「警方及檢控官表現克制，裁判官判刑亦考慮示威人士基於良知而公民抗命的動機」。^[13] 加拿大法院判辭指「公民抗命對民主變革至為重要」及「若公民抗命並無傷害任何人、損害財物、嚴重限制社會必要服務或只屬輕微干擾他人權利，政府回應必須清晰，但無須苛刻」。^[14]

註釋

- [1] 〈魏紹唐：公民抗命或可創改變〉—明報，二〇一四年五月三十日。
 [2] 〈公民抗命〉—《人權字典中英對照》頁五十七，黃默總編輯，台灣教育部出版，二〇〇七年。
 [3] John Rawls, *A Theory of Justice*, Revised edition, 1999, Harvard University Press, Page 320.
 [4] Lawrence Quill, Chapter 1 "What Civil Disobedience is (and is not)", *Civil Disobedience: (Un) Common Sense in Mass Democracies*, Palgrave Macmillan, April 2009, Page 9.
 [5] 同註[3]，頁三三六至三三八。
 [6] 聯合國網頁〈國際非暴力日〉
<http://www.un.org/en/events/nonviolenceday/background.shtml>
 [7] 同註[4]，頁十五。
 [8] 「法治層次順序為有法可依，有法必依，以法限權及以法違義。」——戴權廷〈我們要什麼層次的法治〉，刊於明報，二〇〇五年四月七日。
 [9] 同註[3]，頁四二。
 [10] 同註[3]，頁三三六。
 [11] 余英時〈公民抗命與香港前途〉，刊於蘋果日報，二〇一二年七月一日。
 [12] 同註[4]，頁二及四。
 [13] *House of Lords, R v Jones*, [2006] UKHL 16, 29 March 2006, Para 89.
 [14] *R. v. Mayer* [1994] YJ No. 142. From Leo McGrady Q.C., *Protesters' Guide to the Law of Civil Disobedience in British Columbia*, Take Back Our Community Edition, British Columbia, 23, 24 September 2011, Page 7.

延伸閱讀

《公民抗命》—丁石芝著，進一步多媒體有限公司，二〇〇四年七月。
 《直接行動》—葉蔭聰著，進一步多媒體有限公司，二〇一〇年七月。

主編的話

從去年開始，香港社會不斷激辯「公民抗命」或「公民不服從」行為是否可取，支持的一方認為公民為了挑戰不公義的政策或法律，不惜以身試法，並承擔法律後果包括被捕、檢控、審判及刑責，是慷慨達義之舉；另一方則認為無論持任何理由或面臨任何處境，公民絕不應該故意做違法的事情。辯論當中還牽涉到保障與限制公民權利的法律精神，難得社會對遵守法律有如此熾熱辯論，我們便決定找來一些在外國、中國及香港以往發生過的公民抗命例子，希望有助大家理解「有法可依、有法必依、以法限權、以法達義」的法治理念，繼而深刻思考「公民抗命」或「公民不服從」。同時，我極力推薦各位讀者把第八期人權雜誌〈和平集會的權利〉與今期一併閱讀，因為這兩個專題有非常密切的關係。

區英寶

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柏青

出版

國際特赦組織香港分會 / www.amnesty.org.hk

出版日期

二〇一四年九月

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ISSUE. 11

FALL 2014 / www.amnesty.org.hk

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