

Resolving the Authoritarian Dilemma: Policy Outcomes and Political Control in The Hong Kong Legislative Council

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ABSTRACT: This paper focuses on the authoritarian dilemma: while an interest in sustained social support may lead an authoritarian governments to allow opposition forces to win legislative seats, doing so may lead to outcomes that the government opposes, even its removal from office. While the literature clearly identifies this dilemma, it is remarkably short on the details of how authoritarian regimes resolve it. In this paper, we demonstrate that the Hong Kong government uses formal institutions to decouple electoral success from policy influence. We identify the electoral and legislative institutions developed by the Hong Kong government to maintain control over legislative outcomes in the face of expanded representation of opposition forces. We find that the LegCo's rules of procedure create all-but insurmountable roadblocks to opposition initiatives, and political majorities that might demand greater autonomy from Beijing. In this way, the authoritarian government in Hong Kong has managed electoral liberalization while preserving its ability to veto policy changes that it opposes.

In September 2014, Hong Kong's (HK) democracy activists took to the streets to protest proposed restrictions on ballot access rules to elect the city's chief executive. The new rules would impose a state-run screening process or ideological litmus test on potential candidates, and violated the states' assurances that elections would be fully democratic by 2016. While the regime outlasted the protest movement, popular unrest raised important questions about the ways in which formal rules and electoral reform shape political outcomes and regime durability, both in HK and in electoral authoritarian regimes more generally. Most importantly, in the face of real or potential threats of social uprising, why would an authoritarian regime attempt to maintain power through elections and legislative institutions rather than coercion? What combination of institutions address the unique concerns faced by EARs, and contribute to the stability of these regimes?

Electoral authoritarian regimes (EARs) combine formal elements of democratic representation with coercion to control political and policy outcomes. In HK, the EAR emerged from the British Colonial period and was institutionalized in the bargain that transferred political control from the UK to the People's Republic of China. Referred to as "one country, two systems," this regime combines HK's capitalist economic structure with a governance structure constrained by Beijing, with an elected legislature (the Legislative Council or LegCo) and chief executive as head of government and administration.

While the HK protests underscore the tension that can arise in EARs, a growing literature demonstrates that representative structures can also solve the authoritarian's dilemma – a lack of information about citizens' preferences and elite actions that the regime needs to manage its resources and respond to crises. Although competitive elections and legislative debate can solve this problem, they create a new one: ensuring that legislative outcomes continue to be consistent with regime goals.

Using LegCo electoral statistics, a multivariate analysis of LegCo voting outcomes, and a tool for predicting majority rule outcomes known as the uncovered set, we show how HK's electoral and legislative institutions solve the authoritarian dilemma. To begin with, our analysis shows that the government undercut the opposition's capacity to win a legislative majority by tempering a change in electoral districts, with adjustments to the seat allocation formula and party system rules. Yet, the centripetal forces codified by these reforms fragmented the party system, weakening mechanisms of party discipline and thereby, internal cohesion within the pro-government and opposition factions. As a result, the range of outcomes that could emerge from majority decision making within the LegCo remained large, introducing intolerable uncertainty. To counteract this consequence, Beijing imposed agenda control and voting procedures to narrow outcomes. The LegCo procedure known as split voting not only limits the influence of opposition parties, but also constrains the influence of pro-government allies, in order to increase the likelihood that outcomes are consistent with government aims.

These findings about HK's LegCo represent three contributions to the growing literature on EARs. First, we highlight the important role that policy constraints play in the institutional design of these systems. Second, we demonstrate that legislative institutions are critical tools for EARs interested in sustaining regime-friendly policies. Finally, we underscore the ways in which "reforms" within the authoritarian system can be an important tool for EARs to maintain influence by coopting opposition elites and also placating the democratic demands of the population.

The Origins of Hong Kong's Electoral Authoritarian System

A Crown colony until the handover to China in 1997, Hong Kong is unique in that the authoritarian government is dependent not only on the internal constituency but also on the ongoing approval of the central government in Beijing as a result of its status as a special administrative region of the People's Republic of China. This implies that there are three collective actors in the HK EAR landscape: Beijing and the HK government, pro-government (pro-Beijing) forces led by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) party organization, and the divided democratic opposition.

Importantly, while HK's pro-government forces are Beijing's allies, our analysis demonstrates that their political preferences do not mirror each other, creating the potential for political conflict between them, particularly in the legislative arena. The LegCo has the power to implement broad changes in government policy, including decisions on taxation and spending. Thus, regardless of whether we describe HK government as a decision-maker in its own right or as the agent of principals in Beijing, the government faces a fundamental dilemma with respect to the introduction and development of competitive legislative elections within the confines of an authoritarian constitution. In short, the democratic opposition, although the most prominent threat to Beijing, is not the only one.

Beijing's policy toward Hong Kong's democratization has been motivated by both the fear of a "demonstration effect" for dissidents in Mainland China (Ma 2011) as well as the vulnerability of the city to political interference by foreign interests, notably the United States (Sing and Tang 2012). Due to these risk factors, Beijing "wants the legitimacy of an 'electoral democracy,' but does not want to give up control and accept the uncertainty that elections bring" (Ma 2011, 66). Yet, despite the fact that many important features of HK's governmental structure were largely imposed on Beijing and remain in place almost 20 years

after the transition to Chinese rule, the Chinese government has implemented a series of smaller changes to electoral and legislative institutions, changes which we argue were aimed at addressing the authoritarian dilemma.

The outlines of HK's EAR structure originated in the late colonial period (Scott 2000; Tsang 1988). Initially, the Legislative Council was a non-elective body that included ministerial officials and appointed members. Electoral reform began in 1985 to gradually introduce more elected officials in lieu of the non-elected. Chris Patten, the last colonial governor, adopted new electoral rules amounting to universal suffrage that further democratized the structure. The institutional structure of the post-handover regime is laid out in the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, known as the Basic Law that was adopted in 1990. The Basic Law emerged from the 1984 Sino-British Joint Declaration on Hong Kong. This document serves as a quasi-constitution for the Administrative Region. The system codified in the Basic Law is a good example of an EAR. While the Beijing government has the constitutional power to withdraw appointments of the chief executive-elect and key ministerial officials, they have also established an elected assembly, the Legislative Council or LegCo, which votes on annual budgets and other policy changes.

The basis of the electoral system was also inherited from the colonial period. The first session (1998-2000) of the post-handover LegCo divided seats among three constituency groups: direct elections by geographical constituencies (GCs) with universal suffrage of all registered resident voters; functional constituencies (FCs) involving only designated persons and legal entities as voters in specific fields of business and professions; and Election Committee seats (ECs) filled by candidates chosen from a body of mostly

business-friendly and pro-Beijing electors.¹ This system was clearly designed to provide both Beijing and its allies in HK considerable control over the LegCo. Appendix A outlines the precise nature of these seats in the 2012 LegCo elections.

Yet, the Basic Law also reflected a bargain between the British and Chinese that was struck within the context of the Cold War. The goal of the West was not only to preserve HK's capitalist system within the "one country, two systems" approach, but also to create incentives to establish and maintain a democratic regime. To foster democratic development, article 68 of the Basic Law contained provisions for the "gradual and orderly progress" towards "the election of all the members of the Legislative Council by universal suffrage." The precise nature of compliance with these goals was left to the Beijing government once the handover occurred, leaving considerable discretion for institutional engineering.

Table 1 Here

Table 1 shows how the post-handover legislative mandate has changed under these reforms. The seats originally assigned to the Election Committee were abolished and gradually replaced by the geographical seats. In addition, the Basic Law mandated the creation of ten new seats in the 2012 elections. Insisting on the preservation of the FCs, Beijing reached a compromise with HK's opposition lawmakers. The resulting reform added five new geographical seats and established a new functional constituency of district councilors to nominate candidates for a territory-wide election by all resident voters who do not belong to any other functional constituencies.² These changes resulted in a body where seats are equally divided between functional and geographical constituencies by 2012.

¹ "[2012 LegCo Election- Facts about the Election](http://www.elections.gov.hk)". Available at www.elections.gov.hk. Accessed 10/22/14.

² Voter registration arrangements for District Council (second) functional constituency. *HKSAR Government Press Releases*, <http://www.info.gov.hk/gia/general/201202/17/P201202170159.htm>. Accessed Aug 14, 2014.

The clear expectation of pro-democracy advocates was that absent direct meddling in electoral processes, the number of reform candidates elected in geographical constituencies would increase over time. This expectation posed two practical challenges for Beijing: avoiding the election of a democratic majority, and also precluding an alliance between pro-government and opposition HK forces to demand greater autonomy. In our analysis, we show that neither expectation was realized because Beijing had the power to structure the institutions adopted to govern electoral processes and party formation within the broad outlines of this compromise. These auxiliary rules enhanced the regime's capacity to define the currency of elections and to win geographical constituencies through patronage, thereby undercutting the opposition. At the same time, electoral incentives fragmented the party system, raising the bar to collective action within legislative factions and between the opposition and pro-government forces.

Before turning to the empirical analysis, we briefly survey the literature on electoral authoritarian regimes to highlight the reasons why Beijing would work to preserve HK's EAR. This growing literature identifies the institutional mechanisms that can preserve the benefits of competition without compromising regime control. This discussion highlights the theoretic gaps we address in our analysis: the lack of attention to the regime's control over policy outcomes from control representative structures and the critical role that internal legislative institutions play in the policy process.

Authoritarian Institutions and Regime Stability

The puzzle of an EAR is this: why would an authoritarian elite or ruler prefer electoral and legislative institutions that might constrain future actions, draw attention to government inefficiency, and limit control over redistribution, political careers, and policy outcomes? The answer is that these institutions contribute to regime stability and policy

efficiency. Considerable empirical evidence drawn from cross-national quantitative research as well as single case studies supports the claim that authoritarian regimes that compete in meaningful elections and legislatures last longer than authoritarian regimes that govern without these institutions (Boix and Svobik 2012, Gandhi 2008, Geddes 1999, Svobik 2011, Przeworski and Gandhi 2007). Likewise a number of studies demonstrates that formal institutions, and in particular a professionalized legislature, lead to higher levels of economic growth (Jensen, Malesky, and Weymoth 2013, Reuter and Gandhi 2011, Wright 2009).

Why do institutions have these beneficial effects? In authoritarian regimes, citizens face threats of violence or prison for opposition activities. As such, they have strong incentives to falsify their true preferences about the regime and its policies. Labeled the dictator's dilemma (Wintrobe 1998), the lack of accurate information about social support and social demands undermines the regime's ability to anticipate challenges or to formulate responses to problems as they arise. Controlled but competitive elections and open legislative debate solve this problem by providing some indication of true social preferences for non-governmental candidates and policies and, thereby, reveal satisfaction or dissatisfaction with the current social bargain (Magaloni 2008). As a result, the government can adjust its strategies between elections in order to bolster political support.

Representative structures also help maintain the elite bargain that sustains authoritarian regimes. For example, legislative institutions may serve to coopt the opposition or dissident elements in the regime through proximity to power and perks of office (Reuter and Gandhi 2011). Legislative institutions may also provide a venue to make decisions about the redistribution of economic rents, both to the opposition and to regime members (Gandhi 2009, Lust-Okar 2005, Gandhi and Przeworski 2006, Reuter and Robertson 2012, Wright 2008). In this way, elections and legislative proceedings can define key constituencies

in terms of groups, factions, cleavages, or ideologies and leverage the regime's superior resources to produce outcomes that are acceptable to the regime.

Finally, some scholars argue that these institutions can ensure credible commitments between the ruler and his coalition, enabling and safeguarding elite bargains. Examples include institutionalized succession rules and governance bodies that force repeated interactions among political elites. These interactions enable political bargains by increasing transparency and creating what Boix and Svolik (2014) call a publically observable signal of the ruler's commitment to the existing bargain. Similarly, Schuler (2013) and Truex (2013) argue that formal institutions generate professional politicians whose policy expertise and skills lead to more effective legislation (for dissent see Reuter and Roberson 2012).

Taken together, these arguments suggest that authoritarian regimes, even those built on a very narrow political constituency and elite coalition, may choose to establish electoral and legislative institutions that create a place at the table for dissident elements in the regime and even to opposition forces. With the "why" question resolved, the next step is to understand how the regime implements this goal – especially in light of the risks they create for sustaining the regime's primary goal, staying in power.

We argue that this growing literature has a series of theoretic gaps. It is worth noting the mechanisms that link controlled elections to regime durability and economic growth highlight the importance of the political parties, and in particular the formation of a dominant party, that enhance state control over representative structures and extend the life of the regime (Brownlee 2007; Geddes 2005). Dominant state parties provide disciplinary mechanisms that ensure that elected members vote according to the authoritarian's preferences. As a result, the literature does not consider the problem that arises when the policy preferences of the chamber are either ill-defined or stray from the very narrow

preferences of the authoritarian ruler. In the case of HK, the combination of a LegCo with real policy-making powers and the HK government's willingness to allow relatively free elections to the chamber highlights the puzzle inherent to EARs.

We offer an alternative institutional theory that can explain how this challenge is addressed in Hong Kong, where the possibilities of forming a rival to the Communist Party or even to extending the reach of the Communist Party are limited. Our theory highlights the importance of internal legislative institutions as a constraint on policy outcomes. These effects are largely absent in the literature but frame an important proposition that we explore in our empirical analysis: that internal legislative institutions can impose control over policy preferences in the absence of party discipline. Our analysis suggests that in the absence of a dominant party, legislative institutions are critical to ensure state outcomes even when the legislative majority supports the regime. Further, we show that in the HK context, agenda power and voting institutions remain important tools for Beijing to secure its preferred outcomes even if the pro-government coalition led by the DAB continues to gain seats in the LegCo.

In the next section, we show how HK's EAR structure relies on election rules to influence the structure of preferences in the LegCo. While other EARs resort to falsification or fraud to produce pro-government majorities, Beijing relies on complex interactions among electoral and party system rules to forestall a democratic opposition majority, and also to hedge against a majority coalition that crosses ideological lines to demand increased autonomy for Hong Kong. We then turn to the role of internal legislative institutions as a mechanism to overcome preference diversity within the LegCo and to guarantee policy outcomes in line with the preferences of the hegemon.

Electoral Institutions in the LegCo

Electoral institutions have well known and foreseeable effects on the electoral fortunes of individual candidates as well as the propensity for candidates and legislators to band together to form political parties (Cox 1997). One of the most notable features about the HK electoral system is that it results in the election of a significant number of legislators who are openly opposed to the government's policy initiatives. In the late 1990s, it was widely believed that the plan to increase the number of deputies elected in geographical constituencies would increase the influence of the democratic opposition in the LegCo and provide a formidable challenge to the governments in HK and in Beijing.

Consistent with reforms articulated in the Basic Law, the current LegCo (the Fifth Council, 2012-2016) is comprised of 70 members, 35 elected from five multi-member districts (geographical constituencies or GCs), and 35 elected by various professional groups (functional constituencies or FCs, including 5 seats in a so-called District Council that are voted on by HK residents who are not otherwise represented by an FC). To understand the influence of electoral reform on the structure of legislative factions it is important to consider not only the election competition of competing factions but also their ideological positions. Figure 1 shows the number of pro-regime and opposition legislators elected in GC and FC seats in the five LegCo elections since the handover.³

Figure 1 Here

Figure 1 shows that the “democratic” effects expected from the change in the proportion of seats elected under different rules have been derailed. Even as the number of GCs was increased, pro-government candidates have continued to dominate FC seats while

³ Our classification of legislators into of pro- and anti-government groups is based on their voting behavior, particularly on measures related to democratization and universal suffrage. We discuss this measure in detail later in the paper. Our results are consistent with other analyses of Hong Kong politics (Scott 2000).

opposition candidates lost ground in GC contests. By 2012, pro-regime candidates just missed securing a majority of GC seats.

The increasing strength of pro-regime candidates in the GC contests appears to be the product of concurrent changes to the seat allocation formulas in each race. The GC contests involve party-list proportional representation with the largest remainder method and the Hare Quota. This system lowers barriers to entry and encourages large number of parties—and therefore a large number of candidates—to enter the race. In turn, the rules decrease the electoral threshold for each seat. The net effect of these centripetal forces is a high level of disproportionality in GC races that favors the better-organized pro-government candidates, such as those from the pro-government DAB. In 2012, the fragmented democratic opposition won a total of 57 percent of the vote in comparison with the slight more unified pro-government faction's 40 percent.

Lower electoral thresholds also enhance the value of state resources in contesting the GCs affording the government significant advantage over the opposition. State resources can be channeled to a relatively limited proportion of the constituency in order to win seats for pro-government forces. Likewise, government resources can be mobilized to serve as campaign resources for state-sponsored candidates. As a result, the currency of electoral competition has shifted from universalist policies such as economic growth versus democratization to patronage (Ma and Choy 2003).

In contrast, FCs use either first-past-the post, preferential elimination rules that create significant barriers to entry and dissuade hopeless candidates. These rules also embody significant restrictions on candidacy (Young and Law 2004) that undermine political parties' capacities to field appropriate candidates for the FC elections and further restrict entry. These constituencies represent relatively small numbers of voters enhancing the value

of personal connections and networks in professional or business sector that forms the constituency. These connections are rare in the case of opposition candidates who cannot deliver government support. Narrow sectorial interests also weaken the appeal of party-sponsored and opposition candidates for FC voters, who then disengage from party politics (Lau and Kuan 2002). As a result, pro-government and independent candidates dominate the FC's and a third of FC seats were uncontested in the 2012 elections.

This analysis demonstrates why the opposition's call for the elimination of the FCs either immediately or gradually over time would yield better representation for democratic forces. However, such a change remains unlikely. Members of the regime argue that the professional and business sectors should retain their influence on legislative processes through the FCs because of their importance to the local economy and the need to keep different interests and policy preferences represented in the LegCo - something that a LegCo dominated by the GC members might not achieve (Young and Law 2004).

FC representatives also argue that a legislature dominated by popularly elected lawmakers would pursue welfarism and intervention in business operations, damaging sectorial interests (Loh 2004). Moreover, even though regime supporters are increasingly likely to win GC seats (as shown in figure 1), the central government in Beijing remains wary of change, as replacing the FCs with additional GCs would risk a democratically controlled (and thus anti-Communist) legislature (Scott 2007).

Clearly, these rules also have important implications for the collective action within party organizations and the structure of the party system.⁴ The government has argued that

⁴ Although it is beyond the scope of this analysis, party development is also limited by the prohibition requiring the chief executive-elect to break off any existing party affiliation before resumption of office and parties from developing ties with foreign political organizations, arrangements inserted into the Basic Law on Beijing's demand (Lau and Kuan 2002).

party politics would give rise to populist agendas, threatening Hong Kong's market-oriented and pro-business policy (Lau and Kuan 2002). More importantly, Beijing sees political parties as potential "vehicles for the mobilization of the anti-communist passions of Hongkongers" (Lau and Kuan 2002). Ultimately Beijing's case against party development in HK is rooted in the possibility that political parties will play their constituents against the wishes of the central government.

Consistent with these political goals, the LegCo's party system is highly fragmented on both sides of the ideological divide. Centripetal electoral rules ensured that seats would be dispersed among small parties that remain weak (Ma and Choy 1999). The dozen or so parties active in the LegCo at any given time tend to be transitory candidate-centered organizations, while only one or two LegCo affiliate, have existed since the first post-handover elections (Leung 1998). Weak parties limit the potential for collective action within the legislative body protecting Beijing from the emergence of strong opposition leadership, or the potential of a cross-factional alliance demanding regional autonomy.

In the next section of the paper, we underscore that these institutional mechanisms have been largely successful: LegCo members are split according to their beliefs about democracy, with the DAB and its allies favoring the Beijing position of tighter controls on democracy in Hong Kong, and the Civic Party, Democratic Party, and their allies favoring moves toward universal suffrage and less control from Beijing. However, the centripetal effect of these rules created an additional challenge to the regime. Given party weakness and the role of independent candidates, party discipline is quite weak and there is considerable disagreement within ideological factions. Even in the pro-government forces, disagreements are pronounced. Members of the Liberal Party hold strong pro-market positions and

members of the DAB and various small parties and independents favoring higher levels of government intervention and pro-labor regulation.

As a result of these inter-factional disputes, the range of preferences represented in the LegCo is surprisingly broad. This reality presents a secondary challenge to the Hong Kong government and Beijing whose policy goals are very narrowly defined. Put another way, the mix of electoral institutions may solve the regime's authoritarian dilemma by providing information about the range of preferences within the opposition and pro-government faction but raises uncertainty about policy outcomes. Understanding how the EAR maintains control of the forces it has unleashed requires an understanding the LegCo's policy procedures.

LegCo Institutions and the Authoritarian Dilemma: The Impact of Split Voting

As noted earlier, the legislative institutions of Hong Kong are designed to enable an executive-led administration, which subordinates the legislature to the executive branch while stifling party organizations (Lau and Kuan 2000; Wong 2013). While electoral rules and constraints on party development have gone a long way toward producing this outcome, the lack of party discipline and role of independents creates considerable uncertainty about the precise outcomes that can emerge from majority rule voting rules. In this section, we show that the Beijing government has decreased uncertainty and shifted outcomes by imposing a range of legislative arrangements that afford it tremendous advantage in the policy process. Rules that agenda power and also voting procedures place sharp limits on the ability of lawmakers to alter existing policies or develop new laws and programs.

In particular, the government holds exclusive power to initiate bills in the legislature. While there is no constitutional restriction on the content of government-initiated bills, the Basic Law stipulates that members' private bills that stand to affect government function and

expenditure would require the government's approval before they are tabled – at least in recent years, the government has never given this approval. Formally, members may not introduce a bill that affects public expenditure or that, in the opinion of the LegCo president, would affect the structure or operation of government agencies. Even if the first condition is met, any policy bill must receive the written consent of the chief executive.⁵

Unable to initiate meaningful policy change, lawmakers are confined to amending bills tabled by the administration and proposing non-binding motions to signal position. The amendment process is not subject to substantive restrictions, rather it is controlled by voting rules that establish the FC deputies as a veto player in the amendment process. Specifically, FC and GC members are required to vote separately on amendments and only those receiving majority support in each of the groups can secure passage – a practice we label as split voting. Importantly, the rule on split voting does not apply to government-initiated proposals or amendments, which only need a simple chamber majority for passage. Thus, member-initiated motions or amendments can be rejected even when they receive the support of a chamber majority, but government-initiated bills and amendments can secure passage with a chamber majority regardless of the vote distribution between the FC and the GC groups.

Many observers have argued that since the post-handover constitution affords few avenues for an assertive legislative, lawmakers often resort to confrontational display to mobilize the public. The bills committees and subject panels provide such a platform for legislators to publicly criticize government proposals and positions, at times creating sufficient political pressure for the administration to revise or withdraw proposed bills. Ma (2009) reports that the legislative process has become more 'viscous' as lawmakers spend

⁵ *Legislative Council Procedures on Members' Bills*. <http://www.LegCo.gov.hk/general/english/bills/mem-bill.pdf>. Accessed Aug 10, 2014.

more time scrutinizing and deliberating bills in the hope that the government will trade concessions for time. Individual cases reveal that high legislative viscosity and political miscalculations on the part of the government can lead to serious public opposition to government bill proposals (Ma 2005).

Explaining Institutional Arrangements in the LegCo

Our premise is that LegCo procedures are designed to maximize the government's control over policy outcomes while at the same time allowing free and fair legislative deliberations – the opposition can offer motions or amendments to government proposals, there are no official or unofficial restrictions on the content of these measures, LegCo members are free to speak their minds, votes are counted as cast, and the full record of LegCo debate and voting is publically available. Within these structures, however, the government has established procedures that make it all-but-impossible for the opposition to win on any issue of substance.

To begin with, it is easy to show that the government's control over legislative outcomes does not stem from their monopoly control over the initiation of legislative proposals. While the opposition cannot offer proposals without the government's approval, since LegCo rules do not require that amendments be germane, and allow any legislator to propose amendments, the opposition is essentially guaranteed debate and a vote on whatever measures they like (regardless of their policy effects) if they frame them as amendments to government-sponsored proposals.

In this section, we develop our hypothesis that the government's control over LegCo outcomes is maintained by voting rules that require split voting on measures that do not have the government's approval. In essence, split voting transforms LegCo from a unicameral to a bicameral legislature, dividing the chamber into geographical and functional

constituencies (GCs and FCs) and requiring that a measure receive majorities from both groups in order to be enacted. Because the types of legislators elected to GCs and FCs are typically very different, proposals that will receive majority support from one group will not receive majority support from the other. In this way, split voting in the LegCo is a canonical example of how an authoritarian regime can frame legislative institutions that allow policy debate and even the possibility of policy change, while making it all-but-certain that the government can control the process.

The Uncovered Set and LegCo Outcomes

Our analysis of split voting in the LegCo relies on the uncovered set (UCS), an analytic tool that predicts the possible outcomes of majority rule decision-making given the preferences held by individual legislators (Miller 1980; Shepsle and Weingast 1984; McKelvey 1986; Cox 1987). Building on this work, the authors of this paper and others developed a method for estimating UCSs (Bianco, Sened, and Jeliaskov 2004), and tested its predictive power using experiments (Bianco et al. 2006, 2008a) and real-world data (Kam et al. 2010; Jeong et al. 2009a; Jeong, et al. 2009b; Smyth et al. 2010).

In particular, given data on legislators' preferences, the UCS identifies a region of outcomes that are the potential results of majority-rule voting by these individuals, given all possible proposals, amendments, and agendas (the order in which measures are voted on) that could be devised. In essence, given a definition of covered and uncovered outcomes, we can say that covered outcomes cannot occur, while an uncovered outcome might occur, given the right combination of proposals, amendments, and agenda.

We use the UCS to confirm our suspicions that split voting in LegCo creates a strong roadblock against policy change by non-government actors. Specifically, we should find that, the UCS for the GCs does not overlap with the UCS for the FCs – meaning, in

substantive terms, that no proposal that is enactable in one chamber is enactable in the other. If this condition exist, then LegCo members will be unable to devise measures that will gain majority support from both GC and FC groups, implying that absent extraordinary measures, their efforts to enact legislation will be unsuccessful. At the same time, the Government should enjoy much higher enactment rates, as the split voting requirement does not apply to measures that they offer.

Figure 2 shows ideal points and uncovered sets for the Fifth Session LegCo.

Figure 2 Here

In the figure, each legislator's preferences are represented as a point in the two-dimensional space. A legislator's position on the (horizontal) x-axis describes their feelings regarding democracy and universal suffrage in Hong Kong – legislators on the left-hand side (anti-regime) favor less control by Beijing and expanding the franchise, while legislators on the right-hand side (pro-regime) are supportive of the HK Government and favor a restricted franchise. The (vertical) y-axis gives a legislator's views on issues relating to economic liberalism, such as the provision of social benefits and the emphasis on redistribution as a matter of government policy. These preference estimates confirm the earlier descriptions of LegCo conflicts as well as the overall fragmentation of the Legco party system.

Figure 2 also shows the uncovered sets for the LegCo FC and GC members, along with the UCS for the chamber as a whole, which defines the set of possible outcomes for government-sponsored measures. As the figure shows, the GC and FC uncovered sets do not overlap, confirming that it is impossible for LegCo members to build the two majorities (GC and FC) needed to enact anything. In contrast, the government, which does not face split voting, can enact anything within the larger chamber UCS – note that this right-hand edge of this region is close to the preferences of legislators of the DAB, an organization that

is widely regarded as mirroring Government preferences. Putting these two findings together, it appears that LegCo rules allow the Government to secure its preferred outcomes while making it extremely difficult for the opposition to do so.

Hypotheses

We use our findings to frame two hypotheses that about the ability of the Government and LegCo members to implement policy change given the rules that mandate split and non-split voting on different measures. The first hypothesis is that the outcome of LegCo voting on a measure depends on who proposed it:

Enactment Hypothesis: The probability that a LegCo measure is enacted will be high (~ 1) for measures offered by the Government, and significantly lower for measures offered by LegCo members without Government support.

The first expectation that the government's legislation reflect a compromise between what the Government wants (its budgetary or policy priorities) and the constraints posed by the chamber UCS. That is, out of the measures that are enactable in the LegCo, we expect that the Government will offer whichever one is the best fit to its policy priorities. If so, the likelihood of enactment for Government-proposed measures should be extremely high – absent miscalculations, we expect that the Government will always offer an enactable measure, and that these measures should always be enacted. Of course, this outcome does not indicate that the Government has complete control over LegCo voting, rather it is the product of the Government's interest in getting the best outcome it can, coupled with their ability to anticipate whether different measures will receive majority support when voted on, and the LegCo rules that require only a chamber majority for enactment of Government-sponsored measures.

Our expectations are fundamentally different for measures (motions, amendments to motions, or amendments to proposals) offered by LegCo members without Government support. While the sponsors of these measures have the same ability as the Government to anticipate Legco proceedings, the rules mandating split voting on whatever they offer make it impossible for them to craft an enactable measure – a proposal that will attract majority support on the merits from both GCs and FCs. As a result, we argue, the likelihood of enactment for such measures should be significantly lower than the likelihood for legislation offered by the Government.

Of course, this argument does not imply that measures offered without Government support will invariably be defeated. One possibility is that the DAB -- the party that is closely allied to the Government and from whose ranks the Chief Executive is invariably chosen -- might build support for some of its measures by offering side payments in the form of pork-barrel projects or other desirable largesse. If so, DAB-sponsored measures should have a greater chance of getting enacted, which we frame as the DAB Hypothesis:

DAB Hypothesis. All else equal, non-government measures proposed by DAB members are more likely to be enacted.

A second possibility exception to the Enactment Hypothesis arises from the distinction between motions and proposals: recall that motions cannot change the government policy or alter spending. Put another way, votes on motions or amendments to motions are pure position-taking (Mayhew 1974) – they signal preferences to voters or other interested parties, but do not make any real policy changes. Under these conditions, political considerations may trump policy preferences when some motions or amendment to motions are voted on, resulting in the enactment of some of these measures. We offer this prediction as the Position-Taking Hypothesis:

Position-Taking Hypothesis. All else equal, motions or amendments to motions are more likely to be enacted compared to amendments to proposals.

The next section tests these hypotheses using LegCo voting data.

Analyzing LegCo Enactments

Our test of the Enactment, DAB, and Position-Taking Hypotheses focuses on measures that were voted on during the first half of the fourth (March 2008 – December 2010) and fifth (March 2012 - July 2014) Legco sessions. The unit of analysis is the result of voting on a single measure, with the dependent variable taking on the value of 1 for enacted measures and 0 for defeated measures. We will analyze variation in enactments using exogenous variables that describe the type and sponsorship of each measure.

Figure 3 gives frequency data on the different kinds of measures in our data.⁶

****Figure 3 Here****

The figure shows that the majority of LegCo votes in our data involve motions or amendments to motions – that is, measures offered by LegCo members that require majorities in both GC and FC groups for enactment, and which cannot have policy or budgetary consequences. However, there are also a significant number of amendments to proposals (again offered by LegCo members and enacted under split voting, although they can have policy or budgetary consequences) and proposals or amendments to proposals offered by the Government, which require only a legislative majority for enactment.

Next, Table 2 defines our exogenous variables and gives the predictions based on our hypotheses about the sign and magnitude of the parameters for each variable.

⁶ We exclude a large number (~1500) of opposition motions that were voted on during a few days in late May and early June 2014 – these motions were part of opposition attempts to filibuster appropriations bills. All of these measures were defeated; none attracted more than minimal support, even from members of the opposition. Including these measures in the analysis would reduce the estimated likelihood of defeat for motions and amendments to motions to almost zero, a finding that would not alter the substance of our findings.

Table 2 Here

The baseline category in the regression is a vote on a motion. The Government variable takes on a value of 1 for all proposals or amendments offered by the Government; our Enactment Hypothesis implies that the parameter for this variable should be positive and significant. The next two variables, Amendment to Motion and Amendment to Proposal, equal 1 for amendments to motions and amendments to proposals, made by LegCo members and requiring a successful split vote for enactment. Given our baseline and the Amendment Hypothesis, the parameter for the motions variable should be not significant, while the proposal amendment parameter should be negative and significant. The DAB variable equals 1 for all motions or amendments offered by DAB members; the DAB Hypothesis predicts that the parameter for this variable should be positive and significant. Finally, the Fifth Session variable equals one for all measures voted on in the 5th LegCo session. This variable is included as a control and we do not predict its sign or significance.

Table 3 gives the parameters and significance levels for the logit regression.

Table 3 Here

All of the parameters have the expected signs and significance levels. Figure 4 interprets these parameters, showing the predicted probability of enactment for different measures.

Figure 4 Here

In particular, consistent with the Enactment Hypothesis, the analysis shows that measures moved by the Government are virtually sure of enactment. Conversely, amendments to proposals offered by LegCo members have a very low probability of enactment, although the probability is somewhat higher for those sponsored by DAB members. Finally, the probability of enactment for motions and amendments lie in between these two extremes,

with DAB-sponsored measures again having slightly higher probabilities. Again, these findings are consistent with the DAB and Position-taking Hypotheses.

The Limits of Procedural Control

While our analysis of LegCo voting outcomes highlights the legislative consequences of split voting, it is important to understand that these effects are not inevitable. In particular, split voting would have this effect only when the distribution of preferences in the GC and FC groups are significantly different. Suppose, for example, opposition legislators made strong gains in some future election, winning a majority of FC seats, while maintaining the current composition of legislators in the GC. These election returns would shift the FC uncovered set sharply to the left, to the point that the GC and FC uncovered sets overlapped. In substantive terms, this overlap implies that some policy proposals (presumably those favored by the opposition) would receive majorities in both the GC and FC votes – in other words, the need for split voting would no longer be a constraint on the opposition's legislative priorities.

Moreover, even electoral gains by pro-regime parties can aid the opposition by removing the roadblocks caused by split voting. Recall from figure 1 that the pro-regime DAB party has steadily gained GC seats, to the point that pro-regime legislators are a few seats shy of a majority of GC seats – currently they hold 16 seats while anti-regime forces hold 19. (Pro-regime forces have always held a strong majority of FC seats.) Suppose in the next (2016) election, the DAB gains two seats, one from the Civic Party and from the Democrats, with all other GC and FC seats reelecting their incumbents, so that pro-regime

forces hold a narrow 18-17 majority in GC seats and continue their dominance of the FCs.⁷ Figure 5 shows the how this electoral change would move the GC and FC uncovered sets.

Figure 5 Here

The DAB's small electoral gains translate into a large shift in enactable outcomes: the uncovered set for the GC moves sharply to the right, so that it overlaps a large portion of the FC uncovered set. In substantive terms, by winning two seats, pro-regime forces would gain majority control of the GCs, making it impossible for anti-regime forces to gain majorities for measures that reflect their interest in democratic reform or redistribution.

However, pro-regime gains come at a significant price: they eliminate the procedural roadblocks caused by split voting. As figure 5 shows, given the shift in the GC uncovered set, some measures are now enactable – those corresponding to the area where the GC and FC uncovered sets overlap. In substantive terms, while opposition forces would still be unable to enact their most-preferred proposals, they could build a majority coalition by bargaining with some pro-regime legislators (such as members of the Liberal Party, whose ideal points are in the lower-right of the distribution in figure 5. Such measures would be an improvement for the opposition over Government's proposals, which result in outcomes near the DAB ideal points in the upper-right of the distribution in figure 5.

These results show that the policy implications of the LegCo's split voting procedure are highly contingent on electoral outcomes – on the kinds of legislators elected to FC and GC seats. From the Government's perspective, the current distribution of seats, where pro-regime forces hold the balance of power in FC seats, while opposition forces have a narrow margin in GC seats, maximizes the impact of the split voting requirement – maximizes, that

⁷ Each party's membership has a tight distribution of ideal points – so to create this hypothetical legislature we randomly delete one member of the Civic group, one from the Democrats, and duplicate the ideal points of two DAB members.

is, the Government's control over legislative proceedings. Opposition gains in FC seats would represent an obvious threat to Government control, but so would gains in GC seats by legislators running as the candidates of pro-regime parties.

Solving the Authoritarian's Dilemma in Hong Kong

The analysis of LegCo voting confirms our expectations of how the Hong Kong Government uses legislative institutions to solve the authoritarian dilemma – to allow free elections and opposition participation in the policy-making process while ensuring Government control over budgetary and policy change. The requirement for split voting on all non-government measures creates a significant procedural disadvantage for both opposition and pro-regime legislators: simply put, given the current composition of the LegCo, no measure offered by a individual member can gain the necessary majorities among the GC and FC groups without some sort of side-payment or support trade. As our analysis shows, this requirement translates into relatively low probabilities of enactment, even for motions that are forbidden to have policy or budgetary consequences. The supply of side payments gives DAB-sponsored measures gives an advantage, but a relatively small one.

In contrast, LegCo rules give the Government a clear procedural advantage: its proposals are enacted if they receive a majority in the full LegCo. Given the current distribution of legislators' preferences, obtaining a chamber majority is a much lower barrier to enactment compared to the dual GC/FC majority requirement faced by measures that are not Government-sponsored. The point is not that the Government can always get what it wants from the LegCo – as our predictions show, there is a low but non-zero probability that the Government's proposals or amendments are defeated. Rather, our specification of the LegCo's uncovered set shows – the bounds on what is enactable in the LegCo when members vote in line with their policy preferences – reveals that the Government can obtain

outcomes that are fairly close to its ideal by picking the most-attractive uncovered proposal and allowing a free, unconstrained vote. Moreover, the Government can even allow opposition legislators to occasionally offer amendments to their policy or spending proposals. Given that enacting these amendments requires a majority from GC and FC legislators, the chances that the opposition will succeed in their efforts are extremely low.

These findings also suggest why the Hong Kong Government has strongly resisted attempts to democratize the nomination process for Chief Executive – resistance that prompted protests in 2014. Under the current system, nominees are selected by a 1200-member Election Council, who are themselves selected from constituencies that resemble FCs. This process guarantees election of a pro-Beijing candidate whose actions in office are broadly consistent with existing Government policy. Our analysis highlights the importance of the nomination process: if it were changed to allow a wider range of candidates, it might be possible to elect a candidate who disagreed with existing policies – and who could use the Government’s procedural advantages in the LegCo to offer proposals that only required a simple majority for enactment. Put another way, it is no surprise that the Government has resisted changes to how Chief Executives are nominated – doing so might cost them their dominance over LegCo proceedings.

Finally, our analysis also reveals that the Government’s procedural advantage in the LegCo is not immutable. In particular, if the DAB captured additional two GC seats in the next election, pro-regime legislators would have majorities in the LegCo as a whole, as well as majorities among GC and FC groups. Surprisingly, this change would eliminate the procedural roadblocks created by the split voting in the LegCo – for both pro- and anti-regime legislators, it would be possible to devise proposals that improved on the status quo and were enactable. At that point, the Government would be faced with a problematic

choice: lose a significant measure of control over the LegCo and over policy, or resort to more draconian tactics, such as preventing such measures from coming up for a vote or pressuring legislators to vote against them.

Conclusion

This paper highlights the important role that policy considerations play in the institutional design of EARs. In the case of Hong Kong, the Government's opposition to reductions in the number of functional constituencies, or its proposed procedures to select candidates for Chief Executive and for the LegCo, clearly shape the policy preferences held by elected officials, and thereby shape the outcomes of legislative decision-making. Similarly, LegCo rules that mandate simple majority votes for Government measures and split voting increase the chances that, regardless of who holds LegCo seats, the only outcomes that emerge from the chamber are consistent with Government aims.

We have also shown that legislative institutions are critical tools for EARs interested in sustaining regime-friendly policies. While the Government's moves to fragment Hong Kong's party system lower the chances that a coalition of pro-democracy or a pro-business interest will emerge to oppose the Government policies, there is no guarantee that electoral institutions will secure this aim – particularly in the absence of Government controls over the nomination of LegCo candidates. Viewed in this light, the LegCo's agenda control and split voting procedures provide a second line of defense to preserve the Government's control over policy outcomes.

In addition, our analysis of Hong Kong underscores how EAR reforms can be important tools to maintain influence by coopting opposition elites and placating popular demands for democracy. Over time, Hong Kong regime has increased the number of geographical seats and added functional seats that are selected by citizens who are not part

of a recognized business group. While these changes were consistent with the demands of pro-democracy forces, they did not alter LegCo policy outcomes due to auxiliary electoral rules and legislative institutions such as agenda control and split voting.

Finally, our analysis shows the limits of popular support for EAR electoral and legislative strategies. Despite the majority support for the opposition in the 2012 elections, most of the Hong Kong institutions we have analyzed here, such as the division of the legislature into geographical and functional seats, or the Government's procedural advantages in LegCo proceedings, have been in place since the turnover in 1997. While they have provoked elite opposition and calls for reform, especially among pro-democracy forces, there has been little sign of mass discontent. The 2014 protests began only after the Government proposed a new nomination process for Chief Executive candidates that would ensure the selection of pro-Beijing candidates – and, significantly, suggested that similar procedures might apply to LegCo seats as well. In the aftermath of the protests, the latter question remains unresolved, and it appears that public opinion is a significant constraint on the government's attempts to solve the authoritarian dilemma.

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Appendix One. Hong Kong Legislative Council After 2012 Elections

Type	Constituency	N Seats	Votes
Geographical	Hong Kong Island	7	330,766
	Kowloon West	5	232,081
	Kowloon East	5	284,782
	New Territories West	9	498,610
	New Territories East	9	464,745
Functional (Contested)	District Council	5	1,591,872
	Agricultural and Fisheries	1	133
	Education	1	61,705
	Legal	1	4498
	Accountancy	1	16,470
	Medical	1	6746
	Health Services	1	22,867
	Engineering	1	6780
	Architectural, Surveying, and Planning	1	4739
	Social Welfare	1	10,191
	Tourism	1	926
	Financial Services	1	465
	Textiles and Garment	1	1931
	Information Technology	1	4891
Functional (Uncontested)	Rural, Insurance, Transport, Labour (3), Real Estate and Construction, Industrial (2), Commercial (2), Finance; Import and Export, Wholesale and Retail, Catering		

Source: <http://www.elections.gov.hk/legco2012/eng/results.html>, accessed 10/22/14

Table 1. Seat Allocations in The Hong Kong Legislative Council, 1998 - Present

Council (Term of Office)	Geographical Constituencies	Functional Constituencies		
		Business Groups	District Council	Electoral Committee
First Council (7/1998 – 10/2000)	20	30	-	10
Second Council (10/2000 – 10/2004)	24	30	-	6
Third Council (10/2004 – 10/2008)	30	30	-	-
Fourth Council (10/2008 – 10/2012)	30	30	-	-
Fifth Council (10/2012 – 10/2016)	35	30	5	-

Source: "History of the Legislature," http://www.legco.gov.hk/general/english/intro/hist_lc.htm, accessed 1/19/2015

Figure 1.
Regime Support in the Legco:
Geographical and Functional Constituencies

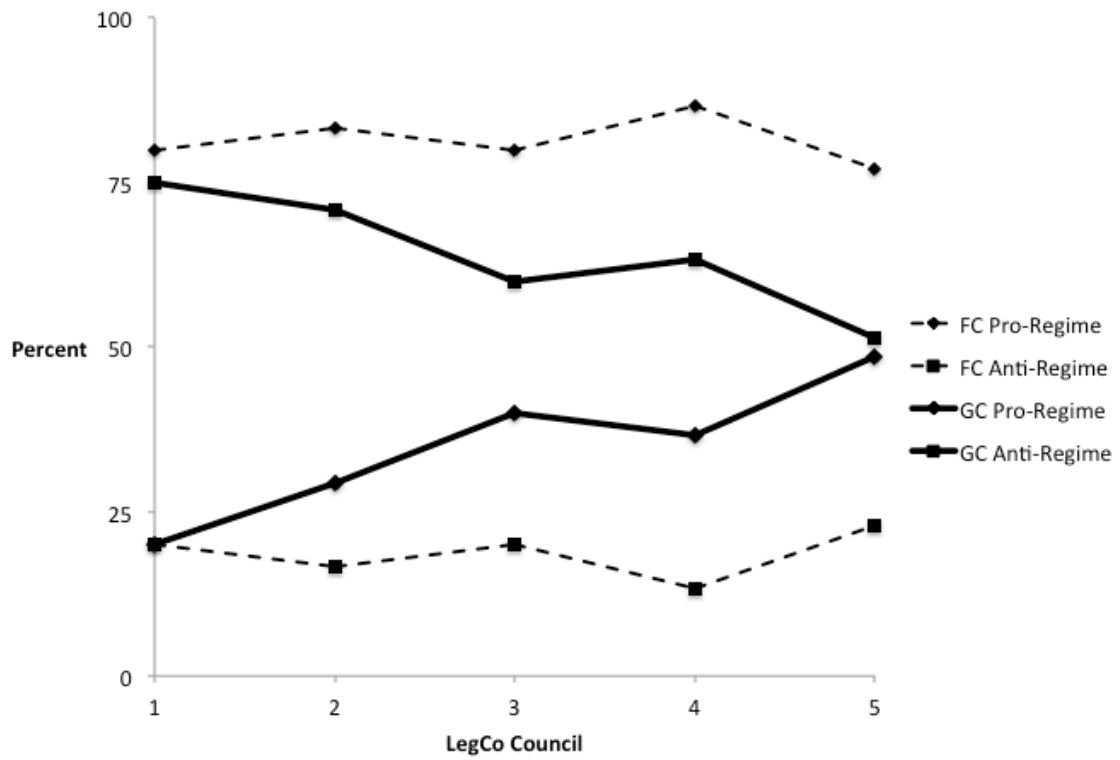


Figure 2.
LegCo Preferences and Uncovered Sets

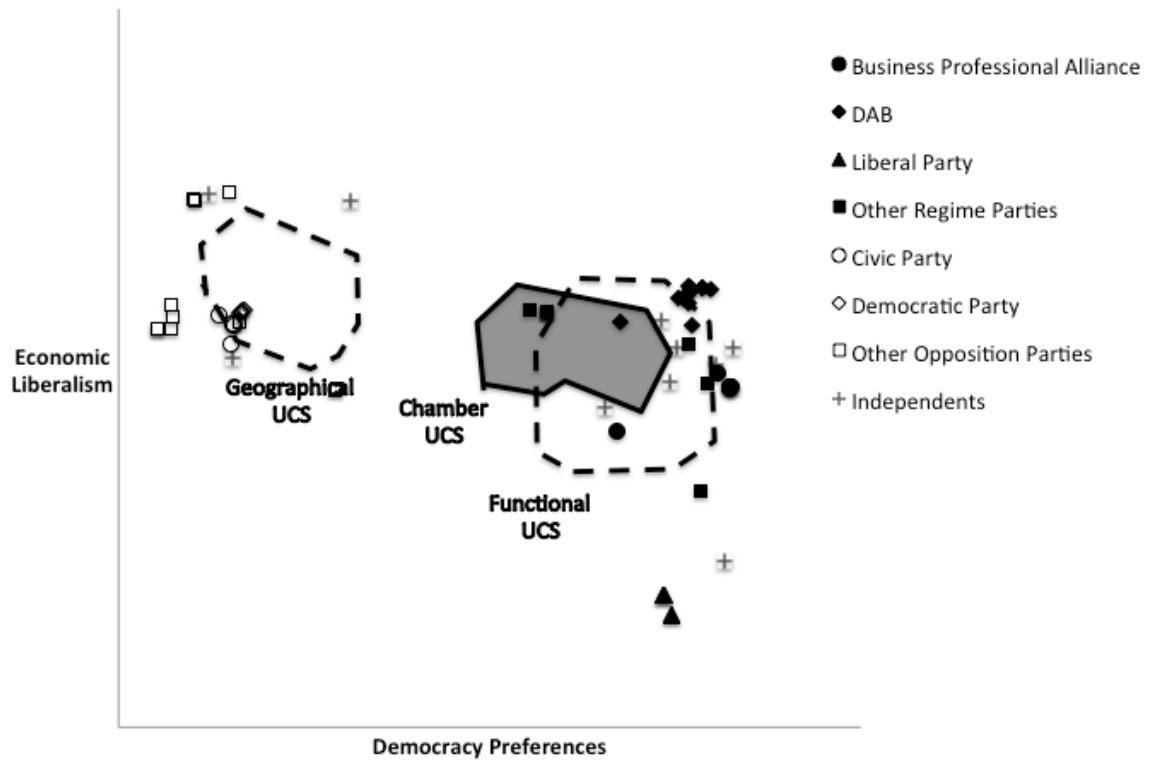


Figure 3.
Types of Measures in Legco Analysis

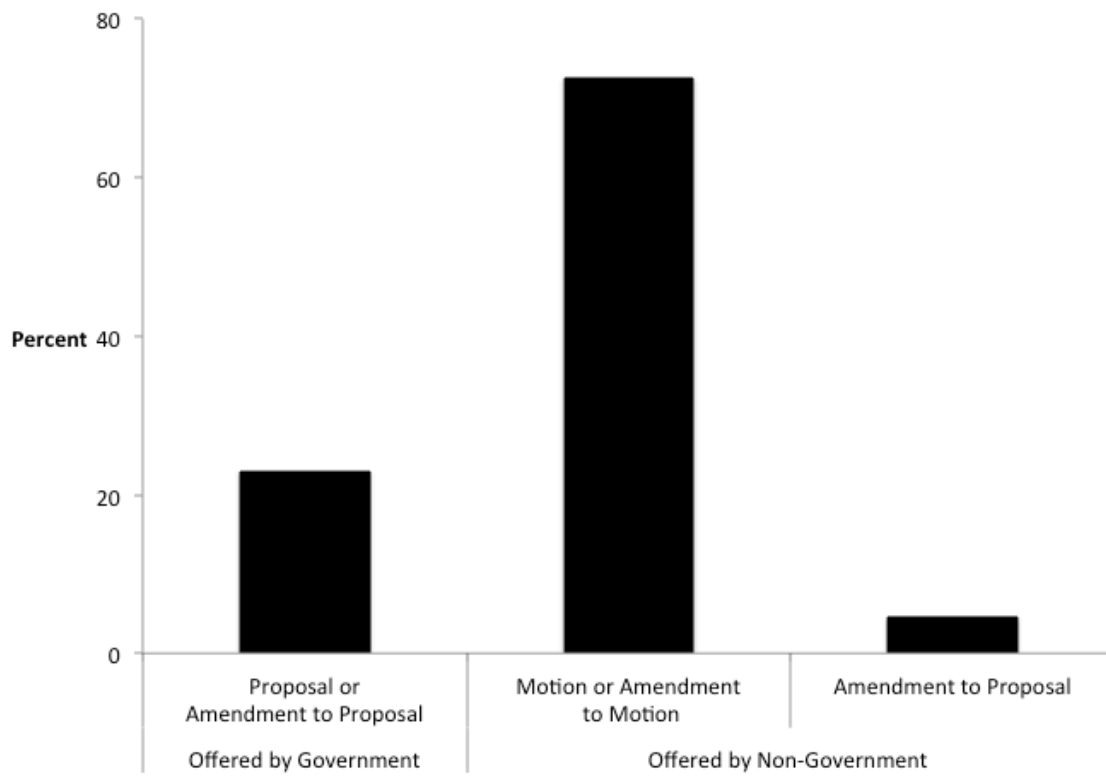


Table Two. Exogenous Variables in LegCo Analysis

Variable	Description	Prediction
Government	Government-sponsored proposal or amendment to proposal (simple maj. vote)	+
Amend. Motion	Amendment to motion, offered by LegCo member (split voting)	ns
Amend. Proposal	Amendment to proposal, offered by LegCo member (split voting)	-
DAB proposal	Measure offered by member of DAB	+
Fifth Session	Measure voted on during 5 th Legco Session	

Table Three. Logit Parameters

Variable	Parameter (Std. Error)
Government or Amendment	5.25*** (.74)
Amendment to Motion	-.03 (.23)
Amendment to Proposal	-1.20** (.58)
DAB proposal	.58** (.31)
Fifth Session	-.21 (.20)
Constant	-.75 (.22)
Chi Square	61.6***
Pseudo R ²	.31
N	711

*** = p < .01, ** = p < .05, * = p < .10, all one-tail

Figure 4.
The Fate of Legislation in the Legco

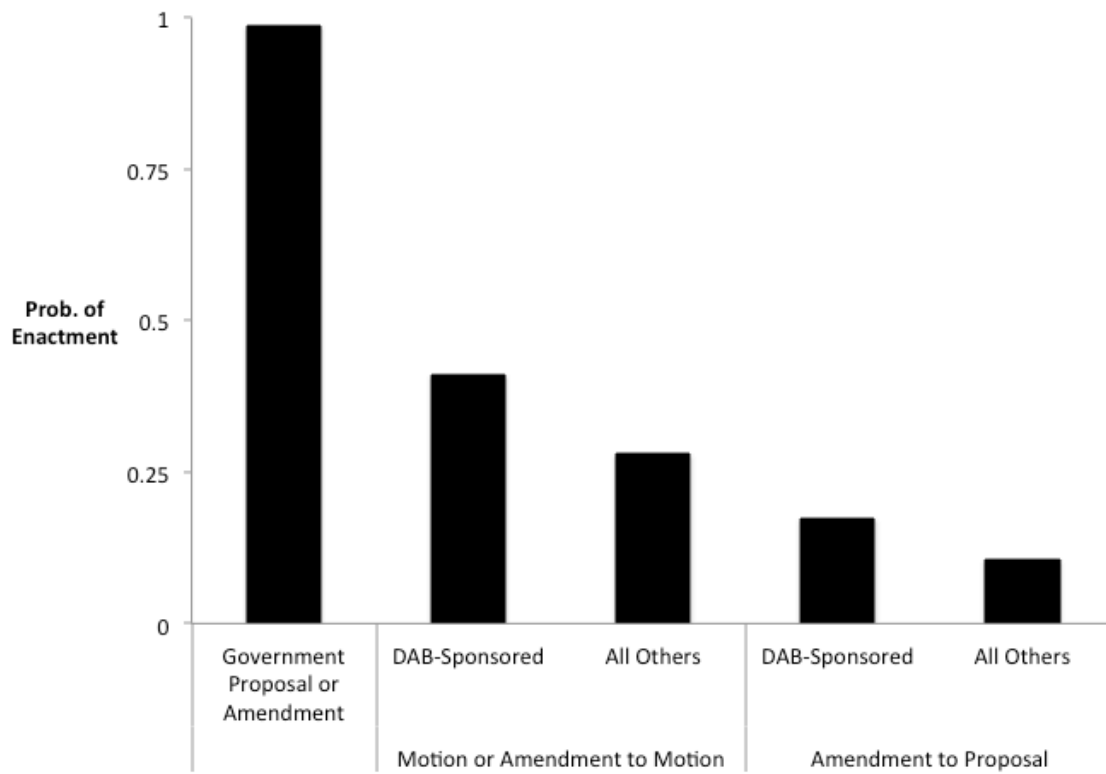


Figure 5.
The Policy Consequences of DAB Electoral Success

